

2003-2-001



Aaron [REDACTED] on 11/26/2003 07:11:30 PM

Please respond to [REDACTED]

To: cabletv@dcca.hawaii.gov

cc:

Subject: PEG Draft Comments

1) Home Rule for PEGs at the Option of the Counties.

I still urge the DCCA-CATV to give complete "home rule" to the counties, including the regulation of the cable operators. I feel the centralized nature of the current set-up is not equitable for the neighbor islands.

2) Additional Support for Underserved Areas.

3) Broader Participation in PEG Governance.

4) Cable Advisory Committee.

5) Ensuring openness and Accountability in PEG Operations .

My opinion on these provisions of this draft proposal is there right on the mark and should be included in the final draft.

Aaron



sheldon jitis [REDACTED] on 12/02/2003 02:19:50 PM

To: cabletv@dcca.hawaii.gov
cc: Glen.WY.Chock@dcca.hawaii.gov, jacobs@hgea.org

Subject Re: Draft Plan for PEG Access

Thank you for sending the Draft Plan for PEG Access. I strongly agree with all those who believe that the private, non-profit status of any organization is highly questionable when the Board of the private, non-profit is appointed by a government agency. Unfortunately, the DCCA's plan does not appear to address the issue of government agencies appointing Directors to Boards of private, non-profits.

Simply transferring the Board appointment authority and \$30,000 to the counties, or retaining the authority and the \$30,000 with the addition of a token Director elected by the PEG organization membership, will do little or nothing to improve cable television access channel operations. Rather than having just one token seat elected by the membership, I would recommend that all voting members of the private, non-profit Boards be elected by the access users of the PEG channels.

Seats on the Boards could be designated for users of each access channel. For example, a 12-person Board could be comprised of 2 users of each of the 5 access channels plus ex-officio members representing the cable operator and the DCCA. I would also recommend that all members of the PEG Access Boards receive a per diem or honorarium to cover the time and expenses required to attend meetings and participate in other PEG Access activities.

Having a private, non-profit Board appointed by a county council is not necessarily better than having the Board appointed by the DCCA. Under the current system, 3% of gross revenues plus payments for equipment and facilities go directly to the PEG access organizations. How does the proposed plan assure that the PEG organizations will continue receiving the 3% plus capital requirements?

-Regardless

of how the Board appointments are made, I believe the DCCA has a responsibility to assure that the fees paid by cable subscribers are used appropriately. It would be unfortunate if the DCCA gave the counties the authority to take the money intended for the PEG channels and put it into a

General Fund supporting public works, law enforcement or some other activity which provides no direct benefit to the cable subscribers.

able dave rick **cabletv@dcca.hawaii.gov** **wrote:**

>

> Aloha!

 \succ

> Thank you for your comments and participation in
> helping the DCCA to create
> a plan that will guide the future development of PEG
> access television.

 \succ

> Attached for your convenience is a copy of the
> executive summary and draft
> plan which are **also** available on the DCCA's website
> at
> www.hawaii.gov/dcca/catv/. If you have any comments
> regarding this draft,
> please submit them by Wednesday, December 10, 2003.

 \succ

> Thank you.

>

> (See attached file: DRAFT PLAN 11-03.pdf) (See
> attached file: PEG
> Cover-Transmittal letter-pdf)

 \succ

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> ATTACHMENT part 2 application/pdf
name==?iso-8859-1?Q?DRAFT PLAN 11-03.pdf?=>
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> ATTACHMENT part 3 application/pdf
name==?iso-8859-1?Q?PEG Cover-Transmittal letter.pdf?=</p>

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COUNTY COUNCIL
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www.co.maui.hi.us/council/

Director of Council Services
Ken Fukuoka

2003-2-003

RECEIVED

2003 DEC - 2 P 4: 25

DIRECTOR'S OFFICE
COMMERCE AND
CONSUMER AFFAIRS

November 28, 2003

Mr. Mark Recktenwald, Director
Department of Commerce and Consumer Affairs
1010 Richards Street
Honolulu, Hawaii 96813

Dear Mr. Recktenwald:

SUBJECT: MOLOKAI MEDIA CENTER

Molokai is a special place, both socially and economically. We are basically a slower paced community saddled by economic challenges where we must fight for what other communities take for granted. The ever-increasing cost of inter-island travel has reduced communication with the neighboring islands to watching local television. To this end, Akaku has done a wonderful job with PEG access channels, allowing Molokai to be a part of what is going on in Maui County.

I support our Media Center for the opportunities it affords our Molokai community. It allows Molokai to share its rich history, culture and magnificent beauty, educating the viewing public. Economically, the Media Center offers employment opportunities as well as programs showcasing the island and it's people that stimulate our visitor traffic.

Our Media Center doesn't run on "Aloha" alone. Funding concerns are an important reality. Maui County in particular knows this dilemma well. As a multi-island county, we must split our resources between Maui, Molokai and Lanai. Maui gets the lion's share while Molokai and Lanai split the difference. It is to this end that I support a redistribution of the total funding to increase the neighbor islands' share. The increased funding would allow greater support for their respective "remote" areas and an increase in flexibility for equipment and facility upgrades.

All of the meetings thus far, regarding input on the regulation of PEG access have been held on Maui, Kauai, Hawaii and Oahu. I want to thank you for coming to Molokai to hear our concerns. Too often are voice is left out

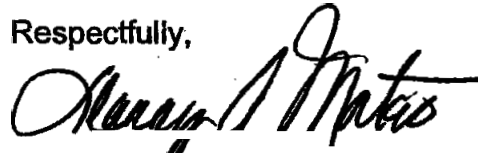
November 28, 2003

Page 2

because we are considered a part of Maui County. I'm glad you recognize that like other remote areas, Lanai and Molokai have a different character and set of circumstances.

Once again I urge your consideration of these matters. Thank you for this opportunity to express the needs of our community.

Respectfully,

A handwritten signature in black ink, appearing to read "Dannya Mateo", written in a cursive style.

DANNYA. MATEO
Council Member

DAM:aas

ROBERT BUNDA
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DONNA MERCADO KIM
VICE PRESIDENT

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MAJORITY LEADER

CAL KAWAMOTO
MAJORITY FLOOR LEADER

SHAN S. TSUTSUI
MAJORITY CAUCUS LEADER

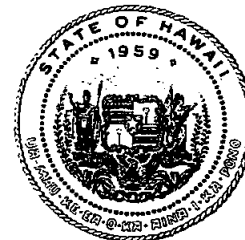
FRED HEMMINGS
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BOB HOGUE
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PAUL WHALEN
MINORITY POLICY LEADER

The Senate
The Twenty-Second Legislature
of the
State of Hawaii
STATE CAPITOL
HONOLULU, HAWAII 96813

RECEIVED
2003 DEC -2 P 12: 25



DIRECTOR'S OFFICE
COMMERCE AND
CONSUMER AFFAIRS

2003-2-004

FILE
A - E
DEC 3 2 51 PM '03
CABLE DIVISION
COMMERCE AND
CONSUMER AFFAIRS

December 1, 2003

Mr. Mark Recktenwald, Director
Department of Commerce & Consumer Affairs
PO Box 541
Honolulu, HI 96809

Ref: DCCA draft plan

Dear Mark,

Thank you for allowing me the opportunity to review the referenced document. I am interested in #1 (Home Rule for PEGs at the Option of the Counties) and #5 (Ensuring Openness and Accountability in PEG Operations). Please let me know if your final plan will include any significant changes in these 2 areas.

Sincerely,

CAL KAWAMOTO
State Senator
18th District (Pearl City/Waipahu)

FIRST DISTRICT
LORRAINER INOUE

SECOND DISTRICT
RUSSELL S KOKUBUN

THIRD DISTRICT
PAUL WHALEN

FOURTH DISTRICT
SHAN S TSUTSUI

FIFTH DISTRICT
ROSALYN BAKER

SIXTH DISTRICT
J KALANI ENGLISH

SEVENTH DISTRICT
GARY L HOOSER

EIGHTH DISTRICT
SAM SLOM

NINTH DISTRICT
LESIHARA JR

TENTH DISTRICT
BRIANT TANIGUCHI

ELEVENTH DISTRICT
CAROL FUKUNAGA

TWELFTH DISTRICT
GORDON TRIMBLE

THIRTEENTH DISTRICT
SUZANNE CHUN OAKLAND

FOURTEENTH DISTRICT
DONNA MERCADO KIM

FIFTEENTH DISTRICT
NORMAN SAKAMOTO

SIXTEENTH DISTRICT
DAVID Y IGE

SEVENTEENTH DISTRICT
RON MENOR

EIGHTEENTH DISTRICT
CAL KAWAMOTO

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TWENTIETH DISTRICT
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TWENTY-FIFTH DISTRICT
FRED HEMMINGS

CHIEF CLERK
PAUL T KAWAGUCHI



Edward Coll [REDACTED] on 12/07/2003 10:46:40 AM

2003-2-005

To: cabletv@dcca.hawaii.gov, DCCA <cabletv@dcca.state.hi.us>, Mark Recktenwald
<mrecktenwald@dcca.hawaii.gov>
cc: coll@hawaii.edu

Subject Comments from Edward Coll on DCCA PEG Plan

Ed Coll's Comments on DCCA plan

ISSUE #1: PEG Oversight

The Plan States:

"Currently, DCCA is responsible for the oversight of all those entities, and has entered into contracts with each of them. Under the Plan, the State will provide each County with the option to oversee PEG access in that County."

MY COMMENTS: If the County accepts responsibility for oversight do they also have the right to select and enter into contracts with the entity of their choice to operate PEG Access? Is this option in conflict with the provisions of HRS 440G?

ISSUE #10: Sunshine law requirements under HRS Chapter 92F ((Uniform Information Practices Act) and Chapter 92 (Public Agency Meetings and Records)

THE PLAN STATES:

"Accordingly, for those PEG entities that remain under DCCA's oversight, DCCA will require that they adopt bylaws and policies which comply with the requirements of HRS chapters 92F and 92."

MY COMMENTS:

I agree compliance with HRS 92F and 92 should be MANDATORY AND ENFORCED. What remedial sanctions (if any) will be assessed if the PEG entities fail to comply? Despite Ho'iike Board President Rowena Cobb's public statement at the public meeting held on Kauai by DCCA (with Director Recktenwald in attendance) stating "Ho'iike has always followed Sunshine, and we will always do so", I have a documented chronology of the Ho'iike board systematically removing sunshine provisions from their bylaws. These board actions were in part the reason for my resignation from the board.

ISSUE #15: Resolution of complaints concerning PEGs

THE PLAN STATES:

"To accomplish this objective, DCCA will relay complaints to the PEGs and request a copy of the responses to those complaints to determine whether additional follow up is needed. The appropriate resolution of complaints by the PEGs is a factor taken into account by the DCCA in evaluating the performance of each PEG."

MY COMMENTS: This plan is completely inadequate and in fact maintains the

status quo. The resolution of complaints has and remains one of the most dysfunctional aspects of PEG entity operations. Rampant bylaw violations and the termination of access producers' without cause remains unresolved to this day.

"The appropriate resolution of complaints by the PEGs is a factor taken into account by the DCCA in evaluating the performance of each PEG." If "appropriate resolution" is a factor taken into account what sanctions and remedial actions have or will be taken to address still unresolved and documented complaints concerning willful and knowing bylaw violations, and the termination of access producers without cause.

Whatever sanctions and remedial actions (if any) taken by DCCA were totally ineffective as evidenced by a recent (Nov 4, 2003) letter to DCCA from Ho'ike Managing Director J Robertson in which he states, "there have been no violations of the bylaws, there are no terminations of public users (with or without cause).

Mr. Robertson is making this claim in the face of documented evidence to the contrary. In a June 6, 2001 letter to me signed by J Robertson he states;

"We are left with no alternative other than to serve you notice of termination of access, to Ho'ike facilities effective immediately"

I have still after years of effort been unable to determine what behavior(s) on my part resulted in my termination, and yet Mr. Robertson claims public users are not terminated!

The following are links provide a chronology of still unresolved complaints regarding bylaw violations, and the termination of public users.

Termination letter from J Robertson <http://kauai.net/abcess/hjune6.html>

Ed Coll's Formal Complaint to DCCA - The Ho'ike board with malice of forethought knowingly violates their own bylaws
<http://kauai.net/abcess/2.htm>

Ho'ike Board Agenda - The April 1 posting of the Ho'ike Board Agenda for their April 3 Board meeting which fails to state why they are going into executive session in violation of their bylaws.
<http://kauai.net/abcess/april1.html>

Ho'ike Board Admended Agenda - Ho'ike amends the April 3 Agenda in violation of Bylaw Sec 7.8b requiring posting of Agenda, for public inspection at least three(3) working days before the meeting.
<http://kauai.net/abcess/april3.html>

DCCA responds to Ed Coll's complaint - DCCA acknowledges receipt of Ed Coll's complaint and faxes it to Ho'ike.
<http://kauai.net/abcess/dmay24.html>

Complaint #2 to the DCCA - The Ho'ike Board refuses to let the public see the April 3 Board minutes before approval, and won't let the public speak in violation of their own bylaws.
<http://kauai.net/abcess/3.htm>

Ed Coll's Access is TERMINATED - Ho'ike terminate Ed Coll's access in retaliation for reporting their bylaw violation to the DCCA, accusing him of violating their bylaws.

<http://kauai.net/abcess/hjune6.html>

Complaint #3 to the DCCA - Ed Coll's complaint to DCCA against the Ho'ike Board for terminating his access to Ho'ike in retaliation for his original complaint.

<http://kauai.net/abcess/4.htm>

Complaint #4 to the DCCA - Ed Coll's complaint against the Hoike Board for their refusal to let him see and comment on the April 3 Board minutes prior to board approval in violation of their bylaws.

<http://kauai.net/abcess/5.htm>

Ho'ike is non-responsive - Hoike flatly asserts they followed the bylaws, but is totally unresponsive to Ed Coll's specific charges of bylaw violations as detailed in Ed Coll's May 24 complaint to the DCCA.

<http://kauai.net/abcess/hjunel4.html>

Ho'ike remains unresponsive - Ho'ike still refuses to indicate any specific behavior on the part of Ed Coll that violated any Hoike Bylaws.

<http://kauai.net/abcess/hjunel6.html>

DCCA throws hot potato back to Ho'ike - DCCA claims they do not regulate public access organizations. fail to directly answer Ed Coll's questions, and passes the potato back to Ho'ike

<http://kauai.net/abcess/djune19.html>

Complaint #5 to DCCA - Ed Coll request the Director of DCCA reinstate his access until Ho'ike demonstrate any specific behavior on his part justifying termination of his access.

<http://kauai.net/abcess/6.htm>

Complaint 16 to DCCA - Ed Coll request the Director of DCCA remove the Ho'ike Board members she appointed with cause.

<http://kauai.net/abcess/1.htm>

Ed Coll's termination 'stands' - Ho'ike informs Ed Coll that his termination stands due to still 'unspecified' behavior at the June 5 Board meeting.

<http://kauai.net/abcess/hjune25.html>

Complaint #7 to DCCA - Ed Coll complains to DCCA that Ho'ike will still not specify what behavior of his constituted a bylaw violation.

<http://kauai.net/abcess/8.htm>

DCCA passes another hot potato to Ho'ike - DCCA is unresponsive to Ed Coll's complaints and continues to forward them to Ho'ike.

<http://kauai.net/abcess/djuly3.html>

DCCA still comatose - DCCA again informs Ed Coll that they do not regulate PEG entities while refusing to answer my question. DCCA also reminds Ed Coll of a an 'independent' appeals process (which does not exist).

<http://kauai.net/abcess/djuly5.html>

H'o'ike sends Ed Coll a form letter - H'o'ike still refuses to tell Ed Coll what behavior of his resulted in termination
<http://kauai.net/abcess/hjuly516.html>

Yet another form letter from H'o'ike - H'o'ike is still unresponsive but assures Ed Coll they are doing a fine job of providing access
<http://kauai.net/abcess/hjuly517.html>

Complaint #9 to DCCA - Ed Coll again try to get a straight answer from the DCCA to no avail
<http://kauai.net/abcess/9.htm>

DCCA can remove board members - DCCA concedes the Director does have the authority to remove board members with cause, and has done so in the past.
<http://kauai.net/abcess/daug201.html>

H'o'ike 'harassment' Letter? - What an unlikely coincidence that J Robertson would just happen to have such a letter sitting on his desk and it would find it's way to me.
<http://kauai.net/abcess/hmistake.html>

ISSUE #16: Role of PEGs : Production versus Facilitation

THE PLAN STATES

"PEG access organizations have also been involved in activities that some have deemed non-traditional. Examples include: (1) responding to local government RFPs for video and captioning services which results in competition with private organizations"

"The DCCA has given the PEGs discretion to determine whether, and to what extent, they should engage in such activities. The DCCA will continue to allow the PEGs discretion in this area."

MY COMMENTS:

PEG entities should stick to their mission of turning viewers into speakers, and not use State mandated public monies to compete with other non-subsidized entities for paid contract services.

"That some have deemed non-traditional?" This appears to be another way of saying these PEG entities are exceeding their authority by going beyond the scope of their mission.

These "non-traditional" activities has resulted in the current situation on Kauai where H'o'ike using state mandated monies built an inventory of equipment and resources intended for the documentation of Government functions, and then bid against other non-profits to provide those services for pay. When Hoiike was the unsuccessful bidder they denied the successful non-profit bidder access to the equipment and resources they purchased with state mandated monies. H'o'ike maintains and the DCCA agrees that the use of publically funded

equipment intended for documentation of government functions may be used by Hb'ike and Hb'ike alone to engage in contracts for pay.

"It is our opinion that he has provided justification for not providing studio access to The Benefit Network.")

Here is a letter from The Benefit Network to DCCA program specialist Chock describing the situation:

--- begin letter ---

Program Specialist Chock and Director Recktenwald,

I am in receipt of your DEC 4, 2003 correspondence.

This is a request for additional assistance and reconsideration of your opinion based upon the following information.

You write "It is our opinion that he has provided justification for not providing studio access to The Benefit Network."

If you are relying upon the procedures cited by Mr. Robertson this is to put inform you that Mr. Robertson is making duplicitous use of inapplicable procedures to discriminate against The Benefit Network.

The procedures cited by Mr. Robertson only apply to Public access and not Government access as evidenced by the cover page of the document entitled "Public Access Operating Procedures". Furthermore no reference to any procedures regarding Government Access are evident in "Public Access Operating Procedures."

Hb'ike despite their claims to the contrary do not have any procedures for Government access and are creating on-the-spot fabrications to deny the benefit network access to Hoiike facilities.

The Benefit Network was selected by the County of Kauai by competitive open bid to document the Kauai county council, planning commission, police commission, and Mayor's Kulena programs for cable cast on the government channel. Hb'ike also unsuccessfully bid to document these government functions, and had in fact been the successful bidder on the previous contract. Hb'ike utilized equipment purchased using state mandated PEG fees, and resources, including the studio to document "Kulena with the Mayor".

This usage of PEG equipment to provide government contracted services provides additional evidence that the Operating Procedures Mr. Robertson cites stating, "Productions for which users are paid, or receive an economic Consideration in exchange for, including any work for hire, contracted labor, etc. do not qualify" are "Public Access Operating Procedures" and do not apply ~~to non-profit corporations contracted to perform government services.~~

The Benefit Network considers these government services not "contracts", but rather Government grants, and Hb'ike agrees with this position as evidenced in their 990 form submitted to the IRS (see their 2000, 2001, and 2002 990s Part 1, 1, c) where Hb'ike itemizes contracted services performed for pay for the County of Kauai as "Government Contributions (grants)."

To date Mr. Robertson or the board has been unwilling to articulate why The Benefit Network is being denied access while Hb'ike has granted such access to itself in the past, and intended to do so again had they been the successful bidder. The only material change in circumstance is that The Benefit Network and not Hb'ike successfully bid to provide the County of Kauai with government documentation services.

The Benefit Network should not be punished for its ability to provide video documentation of Government functions to the County of Kauai more economically than Hb'ike is willing to provide. How is the public being served by Hb'ike denying The Benefit Network access to resources paid for by state mandated public monies and intended for the production of content for the government channel?

All The Benefit Network expects is equal treatment afforded other non-profits (including Hb'ike). When Hb'ike was the successful bidder the DCCA allowed it's designee Hb'ike to use equipment purchased with state mandated cable fees (including the studio) for the purpose of documenting government functions. The Benefit Network expects nothing more than equal consideration.

Mahalo in advance for your reconsideration of this matter. A speedy resolution will allow The Benefit Network to pursue its mission of service to the public.

Other tangential claims asserted by Mr. Robertson regarding my never requesting to inspect the operating procedures, that there were no violations of bylaws, that public users were not terminated, that no record exists that Carol Bain, Barbara, Peck, and Ed Coll (The Benefit Network Board members) are not certified to use the studio, are false and will be addressed in separate emails.

--- end letter ---

Mahalo for allowing me to express my mano.

--

Edward Coll

2003-2-006



"R Brian Tsujimura" [REDACTED] on 12/09/2003
08:37:47 AM

To: <cabletv@dcca.hawaii.gov>
cc: <PBSMike@pbshawaii.org>

Subject: Draft PEG Plan

Dear Director Recktenwald,

Thank you for your efforts on this issue. I want to add my personal support to the public policy decision to continue funding for PBS Hawaii and for treating PBS Hawaii differently from a PEG entity. I believe that PBS Hawaii **provides** a uniquely different statewide broadcast element to the plethora of public voices, and should be treated differently. Thank you for your recognition of this uniqueness. Rick Tsujimura, Board member PBS Hawaii



- TEXT.htm



on 12/09/2003 09:23:53 AM

2003-2-007

To: cabletv@dcca.hawaii.gov
cc:

Subject Cable Franchise Fee

Dear Mr. Recktenwald:

Thank you for your work on the review of the Cable Franchise Fee. I support and appreciate the decision to continue funding for PBS Hawaii at the current level and thank you for recognizing the rationale for treating PBS Hawaii differently from a PEG entity.

Miki

Cheryl K. Hetherington
Board Member, PBS Hawaii

2003-2-008



"Kalowena Komeiji" <kkomeiji@pbshawaii.org> on 12/09/2003 09:37:14 AM

To: cabletv@dcca.hawaii.gov
cc:

Subject: Public Comment

Hi Clyde,

Jim Becker, who is one of our board members, wishes to submit the attached letter in support of the draft PEG plan.

If you have any questions, please don't hesitate to call me at 973-1070.

Kalowena



- becker.doc

December 9, 2003

Mr. Mark Recktenwald, Director
State Dept. of Commerce & Consumer Affairs
335 Merchant Street, Room 101
Honolulu, Hawaii 96813

Dear Mr. Recktenwald

In response to the notice for public comment **on** the DCCA's **draft PEG** plan, please let the record show my support of the current **draft**.

This Season of **giving** is a time to reflect on why many remarkable people give their time and talents to serve on the PBS Hawaii Board. Check **the list**: busy, successful people **all**. **I a m** in my tenth year of volunteer service, first for Hawaii Public Television when it was directed and partly financed by the State, now for PBS Hawaii, a private non-profit dependent **on** you, the viewers, for **support**.

Over the years, I have served on many Boards, from the Japanese Junior Chamber **to** the Hawaiian Historical Society, with stops at such places **as** the Youth Symphony and the Quarterback Club. I never felt "over-boarded." I found each a way of **giving** back to **our** Hawaii for all Hawaii has given **to us**, a life of Aloha in a rainbow Paradise.

My service on the PBS board is a way **also** to give **thanks** for the countless hours of viewing pleasure PBS **has** given to all of us. Nowhere else could we watch uninterrupted programs of the quality of "Masterpiece Theatre" (who can forget such series as Jewel in the Crown or the original "Forsythe Saga," James Michener's all-time favorite?), those catering to musical tastes **from** Grand Old Opry to the Metropolitan Opera (my favorite), "Nature," "Nova," "Antiques Roadshow" (my wife's favorite), the **Ken** Burns series, those intriguing English "Mysteries" introduced by the delectable Diana **Rigg**, and of course, the many delightful children's shows, such a boon to beleaguered parents searching for TV their kids can watch. And **all** broadcast Statewide.

But that's not **all**. Tune in some morning and watch **an** amazing teacher revealing with fun and flair the joys of music to elementary school children throughout the State, many hooked in live. (She **has** a lovely **singing** voice, too). **This** may be the only music our public school kids will get. Or one of the science

shows in which **schools** from all over the **Mainland** **join our** keiki in exploring volcanoes, rain forests and ocean reefs. One day I saw a teacher under 20 feet of water **pointing** out features of the reef.

That's why those **of us** on the Board are glad to give **our time** in gratitude for what PBS gives to **all of us**.

Sincerely**yours,**

JimBecker

Retired Journalist and PBS Hawaii Board Member

2003-2-009



"David H. Leonard [REDACTED] on 12/09/2003 09:30:41 PM

Please respond to [REDACTED]

To: <cabletv@dcca.hawaii.gov>

cc:

Subject: Support for Draft PEG plan

Dear Mr. Recktenwald:

I support the public policy decision to continue funding for PBS Hawaii and in treating PBS Hawaii differently from a PEG entity. Thank you for taking this approach.

David Heerwald Leonard

2003-2-010

December 10, 2003

Department of Commerce & Consumer Affairs (DCCA)
Mark Recktenwald, Director
PO Box 541, Honolulu, HI 96809;
808-586-2625 FAX

Dear Mark,

I just reviewed my September 2, 2003, comments and materials sent to you, and was delighted to see most of my input reflected in the recently released Draft DCCA Plan for PEG Access. I actually believe my input made a difference now, perhaps for the first time since the September, 2001 OIP decision to have Hoike and Olelo follow UIPA (HRS-92F).

Good things about the draft plan:

- a. Promoting Independent Third Party Reviews of PEG (issue #17)
- b. Recommendation for re-implementation of the power of the CAC (issue #3)
- c. DCCA requires PEG organization to comply with Sunshine HRS 92F and 92 and comply with their by-laws (issue #10 and #9)

Potential barriers to implementation to the above good things:

- a. Regarding Independent Third Party Reviews of PEG - assuming the PEG entity does not get to choose or approve of the Third party - as that would not be independent
- b. CAC appointments - What if Governor Lingle does not respond to the DCCA recommendation?
- c. HRS 92F & 92 "Sunshine law" compliance - Comparative analysis of Ho'ike Kauai Community TV bylaws clearly demonstrates a move away from sunshine laws, particularly since 1999. This is a serious problem, as the PEG board continues to assert it is following all aspects of the sunshine laws yet when it acts it does not. I have witnessed many bylaws infractions (Issue #9), including entering into executive session for invalid reasons. Either the board is intentionally misleading, or simply ignorant of the law and their duty to follow their own by-laws. Either way, the current board has appointees who have participated in the removal of sunshine laws and/or have knowingly been out of compliance with their bylaws. Those members of the current board who participated in the removal of "sunshine" from the original bylaws should not be reappointed to the board. In my opinion, they are either derelict in their duty, or philosophically opposed to need for "sunshine" open meetings and open records laws.

Other comments to some of the issues, primarily Governance, include:

The DCCA Governance Plan Issue #2 (Governance) will encourage the County to oversee the PEG entity. However, I don't think the County of Kaua'i is going to immediately jump at the opportunity.

The Mayor may take advantage of this opportunity in the future, and I plan to encourage the county to consider all the alternatives.

The DCCA plan to elect one certified producer (p.6) is a good one, because any time you distribute power and enfranchise voters is good. However, if the current board and staff are to provide the oversight and develop the entire procedures for that election, something they likely have little experience in, I do not have confidence in a fair and unbiased outcome.

I would prefer an independent third party, perhaps the League of Women Voters, to:

1. define qualifications for voters, nominees and the nominations process
2. define the notification of voters and open elections process
3. assist with the drafting of the ballot content
4. provide ballot counting (either actual counting services or official observers)

On page 6 of the governance issue, the qualifications of voters is defined to "be limited to: (1) anyone who is currently certified as a producer at the PEG entity, and (2) anyone who has submitted a tape for broadcast by the PEG entity during the past year." The key word is "currently certified". Some access stations have long waiting lines for certification and may not define a person as a currently certified producer unless many barriers have been met.

For your information, Hoike has established a policy that to be "currently" certified you have to take the certification every two years. I personally have been certified in 1996, and again in early 2001 I took a studio re-certification. Ho'ike is now saying, as of last week, I must re-take the studio certification, but they have not taught this in over a year since their education coordinator, Kenny Luper, left his job. Furthermore, Hoike has no scheduled date for this studio certification training, though I have requested it. I have been told I must come up with a crew of people to be trained before Ho'ike will schedule the training.

I contend that the eligible voting pool may be "structured to disenfranchise many people. This is just one example or way voters can be disenfranchised if current certification is an eligibility requirement.

Therefore, I reassert my input from September 2, 2003 -

- . Each PEG organization will have open membership base (each member gets one vote)

Why not define the membership base in a broad way? After all, the PEG entity should encourage people to participate. Why not open it to anyone who has submitted their own tape, as this public disclosure list is already on file at each PEG entity? Another suggestion is to even broaden the voting opportunity to each cable subscriber, though that would require a cooperation with the cable company, who may actually like the idea of inserting the small ballot or general meeting election announcement into their phone bill as a community service.

The PEG entity should look

~~at the election as a positive outreach opportunity, not a burden.~~ The PEG facility could be used to promote voting participation. Nominees could be encouraged to make video messages describing why they are a good candidate for the PEG board and why they want to serve

This could actually reach out to viewers to educate them about the PEG organization. More viewers would be motivated to participate in PEG.

The original mission of PEG access, to turn passive viewers into active message makers, must be kept. Some PEG entities, such as Hoike, want to change that mission into "community building where they have preferred access to facilities to make video messages for others. Don't let this happen. I too like the idea of civic affairs (CSPAN for Hawaii Issue #16) but it must not take PEG resources.

Thank you for this opportunity to make PEG access better in Hawaii. You and the entire Cable TV Division should be commended for your efforts. This is just a beginning of PEG access reform, and we cannot allow this first step to be the only one. Let us continue, not fall back, down the path of sincere reform.

Sincerely,

Carol D. Bain

[REDACTED]

cc: Hawaii LWW directors: Jaurene Judy and Jean Aoki
cc: County of Kauai, Office of the Mayor



Wendy Arbeit

on 12/10/2003 02:06:06 PM

2003-2-011

To: Mark Recktenwald <mrecktenwald@dcca.hawaii.gov>, cabletv@dcca.hawaii.gov
cc:

Subject: PEG Draft Plan comments

Director Recktenwald,
Please find ~~my~~ comments on the November PEG Plan appended below.

I congratulate you on **this start**. It's more ~~than~~ anything we've seen before. I just hope that you will include the public in the decision-making meetings from here on. **This has** not been done in the past **and**, regrettably, the public is noticeably absent from most lists of entities to be consulted in **this** document.

I have **responded** to your issues **as well as** is possible given the wording in your document. I have some concern that the wording is so vague in places **as** to render the text sometimes meaningless (especially when words such **as** "portion" go undefined) and sometimes open to such interpretation **as** to arrive at two totally opposite conclusions (**as** in "Funding will be available to current recipients of cable franchise fees, i.e., the four PEG organizations." **This** can mean the funding will be restricted to those four [but leaves unmentioned HENC and KHET] or it could mean those four are eligible along with a host of others. Another example is that of the "independent third-party" who might conduct **an** audit. The public **has** reason to be concerned about the vagueness of **this** phrase due to past DCCA selections that were not entirely independent or third-party. Problems of these **sorts** abound throughout the document. Truly, the devil's in the details, **so** we anxiously await clarification of the areas indicated.

Discriminatory and retaliatory actions of access centers have resulted in a diminished pool of active volunteers and the programming they create. If your plan **has** the effect **of** stopping these actions, your department will have gone a long way to toward combatting special interests and supporting exercise of the First Amendment.

Wendy Arbeit
Vice President, Community Television Producers Association

Department of Commerce and Consumer Affairs' ("DCCA") Plan
For Public, Education, and Government ("PEG") Access

Background

Note: On Oahu, 'Olelo has entered into a contract with the Hawaii Educational Network Consortium ("HENC") to be its Education Program Manager. HENC is a consortium comprised of representatives from accredited educational institutions within Hawaii including public and private lower and ~~higher~~ education schools such **as** the University of

~~Hawaii~~, Department of Education, and ~~Hawaii~~ Association of Independent Schools. 'Olelo allocates twenty-five percent (25%) of its revenues ~~from~~ franchise fees to HENC to ~~fund~~ educational programs and services that are primarily cablecast on two of 'Olelo channels.

Olelo **also** supports and airs educational programming from its school satellite centers that do not air on those channels. **Is** that programming supported by HENC? If not, what is the total of costs involved (prorating center operating costs, including staff) and what percent of this is covered by **DOE**?

Adequate evaluation cannot be made without this information.

ISSUE#1: PEG Oversight

Currently, the State of Hawaii through the DCCA regulates the cable television industry in Hawaii. Among other **things**, DCCA performs basic service tier rate regulation, reviews franchise applications/ renewals/ transfers, facilitates resolution of customer service complaints, appoints members of PEG boards, negotiates operating agreements with PEGs, **and** oversees the expansion and functional improvements of the Institutional Network ("**INET**").

Since **PEG** observers believe that the recent **D & O's** redefinition of gross revenue and establishing a cap are not in the public's best interest, **will** this be revisited? If not, why not?

If a County accepts responsibility, **will** it have the right to select and enter into a contract with the organization of its choice?

DCCA's PEG Oversight Plan – ~~At~~ the Option of Each County

There is a significant diversity between the Counties in the needs, priorities, and challenges faced by their respective PEG entities. Currently, DCCA is responsible for the oversight of all those entities, and has entered into contracts with each of them. Current contracts are inadequate with regard to reporting requirements, which need to be expanded and enforced.

ISSUE #2: Governance • PEG Board Appointment Process

DCCA's Governance Plan:

... If the County accepts the opportunity to oversee the PEG entity, then it **shall** be up to the **County** to determine the appropriate selection process for board members in that County. If a County declines the opportunity to oversee the PEG entity, then the current system of **PEG** governance will remain in effect, with one change. One of the positions on each board that is currently selected by the director of DCCA will instead be selected by an open election ~~run~~ by an independent third party for each PEG entity.

If DCCA is going to set **an** absolute number of elected positions, then it should also **set** a standard for the amount of board members throughout the islands. Otherwise, it should be

expressed island-by-island at ~~one-third~~ (rounded to the closest number) of the DCCA-appointed membership. That would make **2 each** for Olelo and ~~Hoike~~, **3** for Na Leo, and **5** for Akaku.

The voters in that election will be limited to:

- (1)** anyone who is **currently** certified **as** a producer at the **PEG** entity, and
- (2)** anyone who has **submitted** a tape for broadcast **by** the **PEG** entity **during** the past year.

Replace the above with:

The voters ~~in~~ that election ~~will~~ be limited to Active Clients.

An "Active Client" is defined ~~as~~ an individual who:

- 1)** has been certified after ~~taking~~ and passing the full producer or tech **PEG training class**, and
- 2)** within the **24** months immediately prior to beginning of the nomination period has
 - A) volunteered on another certified client's project (and not a **PEG-facilitated** or in-house project), or
 - B)** completed and submitted a program of their own creation for broadcast.

I note that no guidelines have been given ~~as~~ to who qualifies to be a nominee, how that person ~~would~~ be chosen, and who makes ~~this~~ determination. For the nominee to adequately represent the Active Clients, I believe that the nominee must **also be an Active Client** and must not be an access employee (either on the payroll or by contract). If, at any time during that person's tenure on the access board that changes, the person must **automatically** be removed.

Furthermore, As a result of actions and non-actions of the current and past Olelo Boards, I am concerned that leaving this election process up to Access Boards will not render results that could in any way be considered equitable and nondiscriminatory. Therefore, your position requires considerable further clarification.

ISSUE#4: Funding - Financial Resources

Franchise fee assessments are consistent statewide, except for ~~an~~ agreed upon limitation that is in place for 'Olelo on Oahu. 'Olelo is **subject** to a \$3.7M cap

This cap, recently devised by the last administration is not in the public's best interest. Will this DCCA reverse it?

that may increase annually based on the Consumer Price Index ("CPI"). ~~This~~ calculated cap amount is compared against the actual 3% calculation, and the lower amount is remitted to 'Olelo.

As stated previously, the distribution of franchise fees collected are ~~as~~ follows:

- ~~1) 3% of gross revenues~~
-

The definition of gross revenue was recently devised by the last administration and is not in the public's best interest. Will this DCCA reverse it?

to the PEG access organization for the specific County where fees are collected;

2) 1% of **gross** revenues to the Hawaii Public Television Foundation (Public Television – **PBS**); and

3) 1% of standard service revenues to the DCCA

4) 25% of Olelo's funds to **HENC**

... The fees collected for each PEG access organization in **2002** were:

Hawaii **\$547,243.00**
Kauai **\$270,569.00**
Maui **\$608,510.00**
Oahu **\$3,387,288.00**

left out:

KHET 1,129,096 (my calculation, based on **1%** of **gross**)

HENC (871,822 (my calculation, based on **25%** of Olelo's funds)

... In any event, it is clear that there are a number of areas which are underserved by the current **system**. These include islands such as Molokai and **Lanai**, rural areas on the neighbor islands such as Hana, and portions of Oahu such as the windward side.

Who has defined these areas? On what basis?

In order to support additional funding for these **services** without increasing the amounts assessed to cable subscribers, DCCA will reallocate funds that are currently being collected to support its administration of cable regulation in **Hawaii**. ... Accordingly, DCCA **will** seek to reallocate a portion of
How much is a "portion?"

DCCA's Funding Plan : Additional funding to support cable access in underserved areas DCCA will implement a three (3) year pilot program that will provide additional funding to meet the cable access needs of currently underserved areas. Such funding could be used to support additional access centers or for other programs which will enhance services in those areas.

Although neighbor islands centers could use extra funds for extra **services**, Olelo hardly needs any more.

Does DCCA have in mind more centers like the current satellite centers that are essentially for schools and benefit the public only marginally?

Funding **will** be available to current recipients of cable franchise fees, i.e., the **four** PEG organizations.

Does this mean funding will be available ONLY to the current recipients or **will** it be available to those **as** well as other applicants? This sentence is too vague.

ISSUE#5: PEG Channel Resource

... Requests for additional channel(s) must be accompanied with documented justification including, but not limited to, the following information:
statistical data illustrating the use of existing channels,

types of programming being cablecast on each channel,
 statistics on channel programming that is first run versus re-run,
 percentage of first run programming versus re-run programming, (this appears to be a repeat of the line above)
 and percentage of time used for "bulletinboard".
 ratio and amounts of local vs. mainland and non-US programming
 amount of pre-produced programming presented by Olelo staff (strongly appears to be by request of administration)
 ratio and amounts of client produced vs. in-house productions
 ratio and amounts of local professionally produced v. local PEG client produced
ratio and amounts of hours of promos for client programs v. in-house and facilitated productions
 hours of neighbor-island produced programs
 amount of satellite feed programs
 times when non-local programming is aired
 ratio and amounts of premieres to repeats of in-house productions
ratio and amount of premieres vs. repeats of client (non-facilitated) productions

ISSUE#6: Sustainability

If a **County** takes over responsibility for PEG access, then it will be up to the **County** to determine its policy on this issue.

If a county does not take **responsibility**, will DCCA impose deadlines on that PEG to develop plans? **will** it insist that the plan be more effective than, for **example**, the current Olelo one that indicates that it will just fold?

ISSUE#7: Greater Community Participation

Remote Access Centers: Currently, some of the PEGs are considering or have implemented remote facilities to address the concern of accessibility to PEG resources. For example on Oahu, 'Olelo has implemented remote sites in Kahuku, Waianae, and Palolo at certain after-school hours only.

Mobile Facilities: Equipping a mobile van with production capabilities is also being considered to address the needs of more remote geographic areas. **This** option provides tremendous opportunities for greater outreach.

Since this option has been suggested by the public for years and promised by Olelo but never implemented, will DCCA impose a deadline?

This option should be implemented first (as in before any more satellite centers are created) because they:

cost less

can be set up quicker

can reach more people

can easily be used **as** a guide **as** to which community is eager to take advantage of access

can be used by all the community at all times

Alternate Sites: It has been suggested that the PEGs explore working relationships with

existing institutions that could extend the reach of their services. This could include collocating with an existing non-profit corporation whose operations could be complimentary. By creating such alliances, the public **will gain** added access to PEG services while the PEGs will benefit by incurring lower outreach **costs** due to collocation agreements.

Since existing **Oahu** satellite centers (except for **LCC**) are in schools and the entire daytime is given over to them, is **HENC** or DOE presently supporting that **portion** of their operations (staff, administration, equipment)? If not, why not?

Facilitated Production: PEGs currently provide the public with the option of creating programming without becoming a certified producer. Such **easy** access **services** include staff supported "open mike" sessions **as well as** volunteer supported facilitated productions.

This **is** incorrect. Facilitated productions **are** facilitated by **staff**. This should read "staff-supported facilitated productions."

Equipment and Staffing: Regardless **of** the alternatives implemented, whether remote, mobile or collocated, the effectiveness **of** these options **will** be determined by their ability to deliver acceptable service levels to the end-user.

How **will** this be defined? By whom? **Will** the guidelines be created in association with the CAC?

ISSUE #8: Cooperation and Collaboration Among PEG Organizations

Equipment Resources: PEGs should implement a policy **of** notification to whom? when equipment is planned to be retired.

Programming Resources: The DCCA supports the current agreement between the PEGs to share programming developed in their respective communities when it is appropriate.

Who determines appropriateness? Who selects which programs and on what basis? Are the guidelines in a document or case-by-case?

ISSUE #9: PEG By-laws

The **DCCA** expects each PEG access organization to comply with their by-laws to remove the potential for complaints and inconsistent operations.

If **not**, what will it do? The present method of referring complaints back to the board that generated and ignored the complaints in the first place isn't **working**.

A couple examples of current, ongoing bylaw violations at **Olelo** have to do with the Strategic Plan's endorsement of in-house productions, a violation of its mission statement (the real **one**, not the reverse one included in the SP) and its training and certification policies that allows **Olelo** to be the "sole judge" for granting certification, not a test taken by **all**. The bylaws mandate "equitable access."

Specifically, the DCCA

is **concerned** with the process by which its **board** meetings are conducted **and** strongly encourages the adoption **and** implementation of procedural rules, such as Roberts Rules of **Order**.

The public testified in the original hearing for this Plan that this has already been done and has been ignored. Will DCCA finally do more **than** just "encourage"?

Adoption and adherence to such rules will facilitate more productive, **fair**, and efficient meetings. More important, it will also insure that the centers do not operate in a manner that disenfranchises and discriminates and that discourages participation.

If a County exercises the option to **oversee** the PEG entity, then it will be up to the County to determine the **administration** and management of the PEG bylaw process. If the County **declines** that option, then DCCA will continue its current policy of attempting to accommodate the unique requirements of each **entity**, while maintaining a degree of **uniformity** among the four entities.

The current policy of "attempting to accommodate" has failed. For example, Oléolo's bylaws have been out of compliance with the OIP opinion regarding open documents for more **than** a year with no indication that any amendments are forthcoming. Will **DCCA** develop guidelines with deadlines and penalties? Apparently they are overdue.

ISSUE#10: "Sunshine" law requirements under HRS Chapter 92F (Uniform Information Practices Act) and Chapter 92 (Public Agency Meetings and Records) ...Some community members and users of PEG **access services** have expressed concern about what they perceive **as** a lack of openness **at** the PEGs.

The DCCA understands that compliance with HRS chapters 92F and 92 can pose a financial and **staff** burden on the PEGs.

If PEGs operated with more transparency, the public would have little need to request documents, thus **minimizing** any "burden." This claim is pretty much a red herring. Can there be any financial or **staff** burden behind the policy **of** not allowing videotaping board meetings, for instance?

ISSUE#11: Daily operational procedures – responsibility of each **PEG**

Although the DCCA recognizes the unique needs of **all** four **PEG** access organizations, it **strongly** encourages the implementation of **written** operational guidelines for both centers and clients

that address

certain significant issues. The existence of written guidelines on these issues helps facilitate transparency and consistent application of the policies of each PEG. For example, **the** daily operational procedures for **all** PEGs should include reasonable hours of operation. Other issues that should be addressed in **written** policies include:

- Frequency of scheduling for first **time** programming vs re-runs;
 - **Sign-out** and use of equipment;
 - Content disclaimer; and
-
- Rules governing political or campaign programming
 - grant procedures for training and facilitated productions
 - **selection** of in-house production projects
 - centers adhering to policies set for clients
 - guidelines for granting facilitated services and selecting in-house clients and projects

Changes in operating procedures must be approved by the Board and reported to DCCA. DCCA must develop and enforce mandatory penalties for PEG violations of operating procedures as well as bylaws.

ISSUE#12: Development of technical standards

The DCCA encourages PEGs to work cooperatively to develop consistent technical standards. ~~These could~~ include a **common** tape playback format, producer certification requirements, and equipment use **certification**. The creation of such technical standards will result in the following benefits:

- Similarly trained ~~at~~;
- Cross support between organizations;
- Additional resources **during** disasters and emergencies; and
- Potential purchasing benefits such **as** volume procurement.

Standards should also be developed with regard to training videos, materials, methods, certification process, and required client forms. These must all be state wide.

ISSUE#14: More Civic ~~Affair~~ Programming (CSPAN for Hawaii)

Some members of the **community** have **identified** a need for more civic ~~affairs~~ programming including **State** and **County** legislative, executive and judicial proceedings, **as well as** community based activities such **as** neighborhood board meetings.

A good part of the problem at present is the current inefficient **and unthinking** policy of re-airing such programming on Olelo that results in excessive delay (often weeks) of Legislative hearings. This inappropriate new policy is another example of how the administration and board of Olelo is unresponsive to the public's needs. **No** matter what is worked out for civic-affair programming, there must be included written policy, methods of oversight, enforcement, and penalties.

Before the **CSPAN** idea can move forward, there must be a dialog on these issues between the affected parties, including proponents of the CSPAN idea, the cable operator, government agencies, and the PEG entities.

~~Dear~~ DCCA, you seem to have forgotten the public once more. CAC and representatives of the public should be included.

ISSUE#15: Resolution of complaints concerning PEGs

...The appropriate resolution of complaints by the PEGs is a factor taken into account by the DCCA in evaluating the performance of each PEG.

~~It hasn't in the past as near as I can see. What will DCCA do in future when complaints are~~
not resolved or if the same complaint reappears repeatedly?

ISSUE#16: Role of **PEGs** :Production versus Facilitation

As the needs of their clients have evolved, PEG access organizations have reviewed and assessed how they can continue to serve their unique communities. In addition to their

mission of training, developing production skills, and providing a forum for exchange of ideas, **PEG access** organizations have also been involved in activities **that** some have deemed non-traditional.

The **"some"** are the PEGs themselves. The public have deemed them inappropriate, discriminatory, a violation of PEG bylaws and federal law.

Examples include: (1) responding to local government RFPs for video and captioning services which results in competition with private organizations, and (2) the development of programming utilizing the organization's **resources**, which **could** result in decreased availability of equipment or other resources (such **as** *air* time) to the public **users** of these **access** facilities. The development of such programming is sometimes referred to as **"community building"**.

Only by the **PEGs**. Others **call** it controlling the content by a select few (just like mass media public access was created to be the alternative to).

The **DCCA** has given the PEGs discretion to determine whether, and to what extent, they should engage in such activities. The DCCA **will** continue to allow the PEGs discretion in this **area**.

This discretion has resulted in the present system that has no written guidelines of any kind. Most troubling regard percentage of budget used, who has special access to such publicly supported programming, and the balance of messages generated. CAC and DCCA should regulate and oversee this area **as well as** staff-facilitated projects.

Another way of examining this issue **is** to look at Olelo's current Strategic Plan. I will quote it (with my comments in red).

"In 2001, the 'Olelo Board of Directors took a bold step, and **following** (incorrect, the word should have been reversing) the principles **of** the mission statement, approved a five year strategic plan with four goals: increase the diversity of voices (especially their own and that of their designated **ingroup**) in the creation of programming; increase the diversity of programming (again, their own); increase civic participation (by those they choose) in community issues; and build community. (Olelo has never defined exactly what it means by this catchall phrase, nor outlined mechanisms for its identification – leading to the appearance of discrimination.)

"The Board recognized that achieving these goals and objectives would require initiatives that would **go** way beyond the normal role of 'Olelo **staff as** facilitators. (actually, it goes **so** far beyond **as** to be in violation of its bylaws, contract with the State, and Federal law) To give the staff the necessary tools they would need, the 'Olelo Board (without suggesting or requesting guidelines) gave a green light to develop in-house projects that would complement the efforts and work of community producers. (Since this **is** in violation of their bylaws and DCCA contract, this **is** a cause for director removal **by** DCCA.) With five channels running **24** hours **a** day, there was plenty of room and airtime for such programming while preserving access for all who want to use 'Olelo. (This implies that **Olelo's** programming would run in the less desirable slots, with the same amount of reruns as programming by clients. The reverse has been true.)"

The plan goes on to claim through some convoluted logic the First Amendment **as** a basis for allowing in-house productions. However, it should be observed that public access derives from the Supreme Court's **First** Amendment concern that the electronic marketplace of ideas, the strength of our democracy, **has** become increasingly dominated by a very few corporate players, rendering it **less** than "robust and **vital.**" **By** creating its own in-house productions with tools of production and distribution that it alone controls, Olelo: the Corporation for Community Television adds its own corporate voice to this nondemocratic **mix.**

ISSUE#17: Independent Third ~~Party~~ Reviews

However, **some** members of the public have suggested that the PEGS should periodically be subjected to the more detailed evaluation **that** an independent third party review would provide. DCCA **agrees** with **this** suggestion, and will implement a program to provide for the PEGS **to** be reviewed **periodically** by an independent third party.

While a management and financial audit is long overdue, the independent third party must be identified before it **is** possible to comment with confidence. In the past DCCA selected an independent third party for mediation who was not independent and was **so** closely associated with Olelo as to only marginally qualify **as** a third party. **I** believe that no entity will fill the **bill** as well **as** Marion Higa's office.

Such **a** review could include issues such **as** whether the PEGs are complying with the **terms** of their **contracts** with DCCA (or the County) and that the **funds** they receive are used for their intended purposes. DCCA expects that one PEG would be reviewed each year, **so** that each PEG would be reviewed every four years.

Will this include HENC? **It** should.

Judging by the quality and age of much of its programming, one must wonder what it's using its funds for **—** not creating programs, that's for sure.

UNIVERSITY OF HAWAII

CABLE DIVISION
COMMERCE AND
CONSUMER AFFAIRS

Information Technology Services

December 10, 2003

Dec 10 '03 3 36 PM '03

MEMORANDUM

TO : Mark Recktenwald, Director
Department of Commerce and Consumer Affairs

FROM: David Lassner *David Lassner*

SUBJECT: **COMMENTS ON DRAFT PLAN FOR PEG ACCESS**

FILE _____
2003-2-012

Thank you for the opportunity to provide input on the Draft Plan released on November 26 for which comments are due by December 10. The following comments are provided as a **followup** to the more substantive formal input provided to you collaboratively by the Hawaii Department of Education, the Hawaii Association of Independent Schools and the University of Hawaii. We represent all accredited education in Hawaii and collectively serve some 300,000 students through the work of 40,000 professionals throughout the State.

We are relieved that the draft plan "does no harm" to education. However, we are also disappointed that it does not make any firm commitments to continued support for education, much less take advantage of any of the opportunities we identified in our statement to strengthen support for what many believe to be the number one priority in our state – education.

We understand that the public hearing process drew attendance primarily from the core "P" constituency which has expressed the most vocal outrage over PEG issues and believes that they are the primary beneficiary of the cable franchise agreements since cable franchise funding is their primary source of revenue. We would note that in the past year the "E" community has collectively provided for more than 10,000 hours of educational access programming. As of September 2003 this programming is now distributed to all neighbor island access centers on a 24x7 basis. Such strides can be largely attributed to consistent and reliable funding of educational access cable. While we are proud of the progress of educational access programming to date, we are also keenly aware that there is much left to do.

We therefore request your consideration of the following specific matters relative to the Draft Plan:

- 1) We welcome the re-activation of the Cable Advisory Committee. However, we are concerned that an almost purely county-based appointment process may not provide the Director with the kind of broad-based input required to promote a holistic view of cable franchising issues. As noted in our earlier statement and as articulated by PBS Hawaii and the DAGS Information and Communications Services Division, many of the benefits of the cable franchises are statewide in nature and go beyond the "P"-related issues that have dominated the current discourse. ~~We urge that the Governor be advised to appoint an advisory~~
committee that is not only geographically representative, but also aware of and committed to the many benefits of the cable franchise beyond "P" access.

- 2) While we share the DCCA's interest in greater Public access in rural areas, we would respectfully disagree with the assertion that "Since the INET is largely deployed, expenditures at that level are unlikely to be needed in the future." The INET is a critical benefit of the cable franchise agreements for the State of Hawaii. As you know, the INET currently provides essential data, voice and videoconferencing services for a broad spectrum of State, DOE, UH and county agencies on a statewide basis. With rapidly advancing telecommunications technologies and increasing demands for electronic services in education and government, we can only expect that we will continue to need to expand and advance the number of sites on the INET. We hope that as these opportunities arrive, as they inevitably will on a continuous basis, that the State, DOE and UH can continue to work together with DCCA to advance Hawaii's electronic modernization through the INET.
- 3) The Draft Plan notes the current allocation of ~~two~~ dedicated channels on all islands for Educational programming and the significant milestone achieved in partnership with the PEG access organizations when they agreed to a common channel lineup. In addition, the Draft Plan notes Olelo's allocation of 25% of its revenue to HENC to fund "E" programming—which is shared to increase statewide educational access on all islands. We request that the Plan strenuously reinforce these commitments, which have been the keys to the success of "E" programming. With the possibility of major changes in governance, e.g., county-based oversight in one or more counties, we are concerned that these current arrangements, which have statewide benefit, could erode as they are not structural commitments. One approach would be to build them into any possible transfer of governance.

We urge DCCA and the Administration to take a broad view of the tremendous potential of the cable franchise agreements as tools to advance the economic and social development of our State and all our communities by increasing educational opportunities for our citizens on all islands, especially those in rural and remote locations. We hope to be able to continue and even improve our public service through the very fruitful and rewarding partnership we have enjoyed with DCCA over many years of work together.

cc: DOE Superintendent Hamamoto
HAIS Executive Director Witt
UH President Dobelle

2003-2-013



Jeff Garland
<digitaleye@hi.net>

12/10/2003 03:33 PM

To: cabletv@dcca.hawaii.gov, "DCCA CATV div. Administrator Clyde Sonobe" <csonobe@dcca.state.hi.us>, DCCA CATV Executive Assistant Patty Kodama <pkodama@dcca.state.hi.us>, DCCA Director Mark Recktenwald <mrecktenwald@dcca.hawaii.gov>, Esther Zukeran <ezukeran@dcca.state.hi.us>, "Glen W. Y. Chock" <gchock@dcca.hawaii.gov>

cc:

Subject: JeffGarland's comments on DCCA DRAFT PEG Plan

see also: <http://hpam.hi.net/dcca/DCCApplanOAHU2/>

<http://hpam.hi.net/dcca/DCCApplanOAHU2/JGcomments/Aloha> Director Recktenwald,

I respectfully request you post a link (<http://hpam.hi.net/dcca/DCCApplanOAHU2/JGcomments/>) to this document on the Cable Television Division's website where they post other public comments rather than **scanning** it and posting in Portable Document Format (PDF). PDF, using your version of Adobe Acrobat, will not preserve the original look and contents of this document **as** my comments are in bold blue and many supporting documents are hyperlinked (green underlined) rather **than** provided **as** attachments, which I have done in the spirit (as outlined in **Sec. 3501. - Purposes**) of the Paperwork Reduction Act, and in the spirit of the Americans with Disabilities Act (ADA). If you choose not to abide by my wishes, please consider any and all hyperlinked documents within this cover letter and my attached comments **as** attachments to be included **as** part of my public comment in your user unfriendly PDF format document, and please include this request to you and do not redact any of my personal identifiable information.

Please note this YDF file has the capability of color and hyperlinks. It was created in Adobe Acrobat version 5.0.5.452.

Thank you **very much** for putting so much effort into this plan to date.

Sincerely,

Jeff Garland
President, Community Television Producers Association (CTPA)
<http://www.aloha.net1-ctpd>
Owner, Hawaii Public Access Media (HPAM)
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DCCA DRAFT PLAN November 2003

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My opinions, comments and additions **in BLUE**. **Strikethroughs** are mine as well

Department of Commerce and Consumer Affairs' ("DCCA") Plan For Public, Education, and Government ("PEG") Access

In exchange for the use of valuable public rights-of-way, cable franchise holders are required to set aside channels for public, education and government uses ('PEG'). The franchise holders pay for this **use** of your public right of way by passing the cost on to you through the franchise fee you pay on your cable bill. Public access channels are most often the video equivalent of the speaker's soap **box** or the electronic parallel to the printed leaflet. They contribute to an informed citizenry in many ways, ~~whether~~ mostly through giving a voice to those who might otherwise not have one.

Through bringing educational opportunities to our homes, or by showing **our** local and state governments' ~~at-work~~ hearings, it helps keep the citizens informed on the workings of government.

In the spring of 2003, inspired by **SR79 SD1**, DCCA decided to reassess the State's policies on PEG access, and to create a plan to guide the future development of PEG access television, and protect Public Broadcasting's illegal piece of the pie **in** Hawaii.

To that end, the DCCA developed a discussion document that identified 16 issues relating to

PEG access, and set forth minimal possible policy options for many of those issues. The public

was invited to comment on the issues identified in the document, some where bused in by the PEG corporation using public funds and provided with guidelines for their comments regarding redistribution of funds, **as well as** any other issues that they believed should be addressed, yet none of those bused in spoke of anything other than the funds. In order to facilitate that process, public comment meetings were held in Hilo, Kona, Honolulu, Kahului and Lihue.

The response received by the DCCA reflects a strong public interest in cable access. 187 individuals and entities submitted written comments in some form. A total of 224 people attended the public comment meetings, and 100 spoke at the meetings, many of whom where coached by the PEG staff **&** board. The public comment meetings were videotaped by the PEG corporations using public funds and

paid staff, and the meetings in Kahului and Honolulu were broadcast live over PEG access channels. Public comments are available for review at DCCA's offices. Additionally, the ~~written~~ comments ~~are~~ posted on ~~our~~ website

(http://www.hawaii.gov/dcca/catv/public_comments.html).

The public testimony and comments show that PEG access is fulfilling ~~its~~ mission of providing a forum for ~~free~~ expression for the people of Hawaii. On Oahu most participants were told what to comment on and coached on what to say. Across the State, citizens

repeatedly told the DCCA about the opportunities that PEG access had given them to reach their fellow citizens.

At the same time, the public comment process identified many challenges and areas for improvement, but less than **10%** of participants contributed comments regarding solutions. These included (1) the fact that conditions in each county are different, and ~~an~~ approach to PEG access that works in one county may be unsuccessful in another, **(2)** the fact that there ~~are~~ areas throughout the State, including both **Oahu** and the neighbor islands, that are underserved by the current PEG access and cable systems, **(3)** a need for a

more participatory governance system for PEGs, both in the process ~~of~~ selecting board members and in the rules governing how the PEGs conduct business, **(4)** a need for **DCCA** to receive ongoing input from the community on issues relating to PEG access, ~~and~~ **(5)** a need for periodic, independent review of PEG operations, and more community involvement in franchise negotiations.

A PEG access plan can address, but scarcely hope to solve, all of these problems, because DCCA refuses to act on complaints regarding many of them. Nor can it satisfy everyone, mostly because the issues DCCA will address are those discussed in back room meetings with access executives and ~~officers~~. What it can do, however, is establish processes and policies

which will enable the interested parties themselves to better address them. In other words,

the plan is just a starting point for ~~an ongoing~~ never-ending collaborative effort to improve PEG access

television in Hawaii, designed to get Hawaii's citizens to defocus on the mismanagement and illegal behavior of some of the PEGs, which in effect helps the state avoid potential litigation.

Background

The regulation of the cable television ("tv") industry is based on federal laws that allow local regulation by a local franchising authority ("LFA"). The DCCA ~~was~~ designated by the Legislature as the LFA for the State of Hawaii and the designator of the nonprofit ~~corporations to manage PEG facilities and channels through rules and policies that~~ are mandated to ensure equitable access to these publicly funded assets.

PEG access was initiated through the collaboration of the Legislature, DCCA, the cable tv operators,

and the four Counties. A PEG access organization was ~~established~~ designated by

DCCA (state government) in each County **as** a private, non-profit 501(C)(3) corporation to serve the unique requirements of that county.

The following are the PEG corporations:

Hawaii Na Leo 'OHawaii, Inc. ("**Na Leo**")

Kauai Hoike - Kauai Community Television, Inc. ("Hoike")

Maui Akaku - Maui County Community Television, Inc. ("**Akaku**")

Oahu 'Olelo - The Corporation for Community Television ("**Olelo**")

Each of these access organizations is funded by fees which are collected by the cable operator from its subscribers, **which in essence means that you pay for the cable company to use your public right of way. In reality you are paying them so they can pay you back.** Federal law states that **an** LFA can assess up to **5%** of the cable tv operator's **gross** revenues for purposes of these franchise fees. DCCA has decided to only collect 4.64%. The recipients of these fees include the four PEG access organizations, the DCCA, **the state Institutional Network**, and the Hawaii Public Television Foundation ("**HPTF**").

The HPTF is better known to many as KHET Public Television or **PBS Hawaii**.

The current distribution **of** franchise fees collected in each County is:

3% To the PEG access organization for the specific County where fees are collected

1% To the Hawaii Public Television Foundation (Public Television – PBS)

.64% To the DCCA to support the administration **of** the program

Note: DCCA receives **1% of** standard service (**basic + value = standard**) revenues, not gross revenues.

1% of standard service revenues are approximately **.64%** of **gross** revenues.

In addition to operating funds collected from cable subscribers, the cable operator also **makes** capital fund payments to the PEGs for the purchase **of** items including equipment, furniture, and fixtures. These payments are not a part of the franchise fee cap of **5%**, and are not directly assessed to subscribers on their invoices, they are indirectly **stealthily** assessed in the rates you pay. The capital fund payment amounts are the result of negotiations that involve the DCCA and cable operator with

input **from** the PEGs, **but only on issues DCCA decides to disclose.** At certain designated dates within the franchise period, the PEGs

are requested to work with the cable operator, **with no opportunity for public input**, to develop a capital payment plan that is then submitted to the DCCA for consideration.

The PEG access organizations also receive channel capacity on the cable tv operators' systems. All four PEGs have been authorized the use of five (5) channels. In the past they were authorized to use up to 10% of the channels provided by the cable company.

The new authorization of only 5 channels by DCCA resulted in a loss of the potential use of 3 channels on O'ahu which some consider a gift to the cable company worth millions of dollars a year. ~~Additional channels can be requested by the~~

PEGs, with supporting documentation. These requests will be reviewed by the DCCA which will then enter into discussions with the cable

operator, **behind closed doors or on the golf course.** Based on the results of this review process, DCCA will then make a decision on the request for additional channel(s). The

review criteria include items such as current use of channels in production, percentage of first time versus re-run programming, channel utilization by local producers (not just access producers, but professional and network as well), and other factors related to channel demand.

Note: On Oahu, 'Olelo has entered into a contract with the Hawaii Educational Network Consortium ("HENC") to be its Education Program Manager. **HENC** is a consortium comprised of representatives from accredited educational institutions within Hawaii including public and private lower and higher education schools such as the University of

Hawaii, Department of Education, and Hawaii Association of Independent Schools.

HENC's advisors are made up of legislators, state cable and communications regulators, educators and a private software development corporation owner.

'Olelo, in decision and order [D&O] #261 (most recent O'ahu franchise agreement) is mandated to allocate twenty-five percent (25%) of its revenues from franchise fees (capped in **D&O #261** at **37** million plus annual CPI increase **with no** opportunity for public input on the matter) to HENC to fund educational programs and services (some of which appear to be non PEG Access related) that are primarily cablecast on two of 'Olelo channels, but don't let that fool you as the programs are distributed statewide so O'ahu PEG funds are indeed indirectly redistributed to neighbor islands already, though 'Olelo Executive Director Lurline McGregor says otherwise.

Olelo also supports and airs educational programming from its school satellite centers. Is that programming **supported** by HENC as well? If not, what is the total of costs involved (prorating center operating costs, including staff) and what percent of this is covered by DOE?

ISSUE #1: PEG Oversight

Currently, the State of Hawaii through the DCCA regulates the cable television industry in Hawaii. Among other things, DCCA performs basic servicetier rate regulation, reviews franchise applications/ renewals/ transfers, facilitates resolution of customer service complaints (not the ones you call into Oceanic Time Warner, only ones you file with DCCA CATV as an official complaint), appoints members of PEG boards, negotiates operating agreements with PEGs, and oversees the expansion and functional improvements of the Institutional Network ("INET").

Interesting that responsibilities regarding PEGs are listed in this document, but nowhere on **DCCA's** or CATV's website, not even under "

"

Since PEG observers believe that the recent **D&O's** redefinition of gross revenue and establishing a cap are not in the public's best interest, will this be revisited? If not, why not?

The DCCA also participates in matters indirectly related to cable television, such as advocating the interests of Hawaii consumers with regard to Direct Broadcast Satellite ("DBS"). The DBS industry is regulated on the federal level by the FCC and is not regulated on the State or local level. **(It would be interesting to ask for all records pertaining to the aforementioned advocacy. I think all they have done was submit one document to the FCC).**

It should be noted that Hawaii is one of a very few States that has franchising authority at the State level **(one of only 2 or 3)**. On the mainland, regulation of the cable industry most often resides at the city, county, or municipal level. In certain states, a cable operator may interface with scores of LFAs.

A key threshold question is whether, and to what extent, the State should be responsible for PEG access matters and cable tv regulation.

DCCA's PEG Oversight Plan – At the Option of Each County

There is a significant diversity between the Counties in the needs, priorities, and challenges faced by their respective PEG entities. Currently, DCCA is responsible for the oversight of all those **(PEG)** entities, and has entered into contracts with each of them.

Current contracts are inadequate with regard to reporting requirements, which need to be expanded and enforced.

Under the Plan, the State will provide each County with the option to oversee PEG access **(only)** in that County.

If the County accepts:

All matters relating to PEG oversight within the County will be delegated to the county by the DCCA, including but not limited to the determination of how to select board members of the PEG entity, and what requirements to place on the PEG entity for "sunshine" in its operations. **(Where is the complete list of "All matters?")**

The current system of funding will remain in place, i.e., 3% of the cable operator's gross revenues collected in each County will be used for PEG purposes in that County **(except O'ahu due to the current funding cap)**. These fees are currently paid by the cable operator directly to the PEG organization in each County.

DCCA will provide the County with funding (\$30,000.00/yr.) to assist in the administration and management of PEG access in that county. **(but will it grow annually?)** These funds will come

~~from the cable subscribers' fees that are currently collected to support the administration of DCCA's cable program.~~

The current contract between the DCCA and the County's PEG access organization will be voided once a new contract is executed between the PEG access organization and the County, as well as between the County and DCCA. The County will be required to

indemnify the State for **any** liability associated with the County's oversight of the PEG entity, **and** to require the PEG to cooperate with periodic audits (see issue 17 below).

The already minimal reporting requirements in the DCCA/PEG contracts must be increased to include meaningful measurements of performance of their missions per their governing documents.

If the County declines:

DCCA will continue to oversee the operation of the **PEG** entity located in that county.

Again, The already **minimal** reporting requirements in the DCCA/PEG contracts must be increased to include meaningful performance measurements.

In summary of Issue #1:

I feel that all the potential benefits for County rule over PEG and Cable regulation was lost with the signing of Decision and Order #291 which effectively created a statewide cable monopoly. Had cable regulatory power been in the hands of the counties when they all had independent cable companies in each county, perhaps better agreements could have been struck, but now that the gifts have already been given to Time Warner by DCCA, it would be next to impossible for the counties **to** strike a better deal without possible litigation, which could take years and countless sorely needed funds. Perhaps once reactivated the Cable Advisory Committee (CAC) should be considered the proper venue for county involvement with an eye for legislatively increasing members on CAC to include representation for all **P, E** and G sectors in each county.

ISSUE #2: Governance - PEG Board Appointment Process

Currently, members of the PEG board of directors are appointed by the Director of the DCCA and by the cable operator for each County. The number of **board** members for each PEG entity differs, reflecting the unique needs and wishes of each board.

County	PEG Entity	DCCA Appointed	Operator Appointed	Total
Hawaii	Na Leo	11	1	12
Honolulu	'Olelo	6	3	9
Kauai	Ho'ike	7	2	9
Maui	Akaku	14	1	15

The DCCA has acknowledged the autonomy and decision making authority of each PEG board of directors, and accordingly has not involved itself in the daily operational and

financial management of the access organization (other than meeting with the directors behind closed doors with no documentation or meeting minutes). Each PEG board is responsible for all financial and operational management matters, including issues such as the uses of financial and equipment resources, and the resolution of complaints from its producers and interested persons, (not to mention abiding by state and federal law and adhering to their contract). The DCCA and each PEG organization have a (minimal) contract (actually only an "Agreement") currently in force **that is** automatically renewed (no questions asked or meaningful performance verification required) annually unless terminated **or** modified.

How can they possibly be considered autonomous (**The power or right of self-government; self-government, or political independence, of a city or a state.**) while DCCA appoints the majority of board directors, requires the corporation to return **all** assets to the state upon dissolution, mandates the public pay fees to support a non-profit organization and has **final** approval of bylaws? (See OIP Opinion 62-08 and the Attorney General's Opinion)

As board vacancies occur, each **PEG** access organization initiates a (questionable) nomination process that includes public notice of the vacancy, review of applications received (not true), selection of nominee (with the Executive Director included in selecting body), and presentation of recommended nominee (not necessarily in the priority chosen by the nominating committee) to the DCCA or cable operator for appointment to the board. The DCCA and the cable operator have the discretion to accept or reject the recommendation (historically nominees have been close acquaintances of the DCCA Director) .DCCA and the cable operator also have the authority to remove directors ("with cause") once they are appointed, (but have only once removed a member with cause despite repeated requests). A recent opinion by the Office of Information Practices ("OIP") stated that the DCCA's board appointment authority was a factor (one of 3 major ones) in OIP's opinion that PEGs were **an** agency for Uniform Information Practices Act ("UIPA") purposes. Some observers believe that this opinion has jeopardized the private, non-profit status of PEG access organizations and have argued vigorously for the board appointment process to be amended by removing the DCCA's appointment authority.

Many believe the appointment process should be more democratic and definitely ~~not self-appointment~~

Begs the question whom he is referring to, we the people or 'Olelo Lurline McGregor and her board chair Gregson.

The issue of governance, specifically the appointment of board directors, has been a much debated topic over the past few years. One argument in favor of continued DCCA involvement concerns the funding of the PEGs. Franchise fees are the result of Decisions and Orders issued by the DCCA to the cable operator. The cable operator is ordered by the DCCA to calculate, collect, and distribute funds from cable subscribers for PEG purposes. The DCCA has historically believed that it needs to exercise oversight of the expenditure of these funds. The current board appointment process provides the DCCA with some amount of oversight, both through the selection of directors and through the power of removing directors. Proponents of change argue that the DCCA retains adequate oversight through the annual reporting and contract renewal process. They believe that the DCCA ~~has~~ adequate oversight by the fact that the contract can be renegotiated or not renewed.

One issue that became apparent through the public comment proceedings is that there is a significant sense of alienation on the part of some users of PEG access. These users feel that they do not have a **real** voice in the governance of the PEG entities. Their frustration is reflected, among other **things**, in a number of complaints made against the PEG entities.

It is the conclusion of DCCA that the present system provides a degree of oversight and accountability which is appropriate and necessary. However, the system should be modified to provide for a greater diversity of views on the boards of the PEGs.

DCCA's Governance Plan:

If the County accepts the opportunity to oversee the PEG entity, then it shall be up to the County to determine the appropriate selection process for board members in that County. If a County declines the opportunity to oversee the PEG entity, then the current system of PEG governance will remain in effect, with one change. One of the positions on each board that is currently selected by the director of DCCA will instead be selected by an open election run by each PEG entity. The voters in that election will be limited to: (1) anyone who is currently certified **as** a producer at ~~the~~ PEG entity, and (2) anyone who has submitted a tape for broadcast by the PEG entity during the past year.

Being that this says "and" it appears that you must be a "currently certified as a producer" and "submitted a tape for broadcast by the PEG entity during the past year". Also note it refers to "certified as a producer" which begs the question if a certified "camera person" or "studio certified"

~~studio~~

exactly what a "producer" is has to be done.

Having the window of opportunity only one year can potentially eliminate past contributors that have the most extensive knowledge of the **workings &/or** failures of the corporations. A person with only one year under their belt has hardly had

time to witness; the barriers that can potentially arise by inequitable enforcement of Operating Policies, misplaced tapes, improperly scheduled programs etc. 'Olelo requires programmers utilizing facilities in the creation of their programs to sign documents allowing 'Olelo to air their **programs** for three years. They may not have created or volunteered on a production in the past year but in essence are still contributing to the organization if their show is still airing.

Certification is sometimes just given to preferred clients. Pre dating of certifications could be easily accomplished.

Perhaps it should read something like this:

~~One~~ Three (3) of the positions on each board that is currently selected by the director of DCCA will instead be selected by an open election run by an independent third party. The ~~nominees~~ and voters in that election shall be limited to anyone who is currently an active client in good standing at the PEG entity.

An "active client in good standing" is **defined as** an individual who:

Has been certified after taking an 'Olelo training class, and

within the **24** months immediately prior to the beginning of the nomination period has;

- 1) volunteered on another training certified client's project (i.e. a **non-PEG** facilitated project); OR
- 2) completed and submitted a program of their own creation for broadcast.

Currently, there are positions on each of the PEG entity boards which will need to be filled on June 30, 2004, and which are scheduled to be selected by the Director of DCCA.

Under DCCA's plan, the first **of** those positions on each board will be selected using ~~this~~ election process. The PEGs shall be required to amend their bylaws subject to approval of DCCA to establish the election process prior to that time.

Neither the statement "PEGs shall be required to amend ~~their~~ bylaws subject to approval of **DCCA** to establish the election process" nor any of the original wording ~~above shows any intent as to who will or should~~ be considered for "One of the positions on each board" that "will instead be selected by ~~an~~ open election run by each PEG entity". It appears that will be left up to the board? DCCA needs to spell out their criteria for approval of the election process and what are the expected resulting elected members.

While the above identifies the voters, it gives **no** indication **as** to what population the nominees would be drawn from, who would nominate them, or how they would be nominated. As a result of actions and **non-actions** of the current Board, **I** am concerned that leaving this election process up to it will not render results that could **in any** way be considered equitable and nondiscriminatory. "DCCA's Governance Plan", appears to be hinting the outcome should be to provide for an "active client in good standing" to be elected to the board by **his/her** peers. If **so**, this needs to be made clear.

ISSUE #3: Cable Advisory Committee

The Cable Advisory Committee ("CAC") was intended to advise the Director and cable operators, upon request, on cable television related matters. **This** committee was established by statute, but has not been active since 1990. It appears that the prior Administration believed that the CAC had been established to provide guidance during the formative years of cable regulation, and that it had outlived that role.

Under current law, the committee **is** should be comprised of five **(5)** members who **are** shall be appointed by

the Governor and serve without pay but **are** entitled to reimbursement **of** necessary expenses. The committee last met before 1990, and the last member's term expired in **1996**. No replacement members have been named since then, in violation of state law. There is an urgent need for DCCA to receive ongoing input from the community on cable matters

generally, and specifically on issues relating to **PEG** access. Accordingly, the DCCA will recommend to the Governor that she should appoint new members to the committee.

Current

law does not specify residency or other requirements for membership. However, the DCCA will recommend to the Governor that representatives from each of the four Counties be appointed, along with an at-large appointment. The DCCA will further recommend that the Governor seek input from the mayor of each County regarding possible appointees from that County.

It might be prudent at this point in time for a member of the public to put in a records request to the Governor's office for all correspondences regarding this matter to make sure this is not already a done deal.

ISSUE #4: Funding - Financial Resources

Franchise fee assessments are consistent statewide, except **for** an agreed upon limitation that is in place for 'Olelo on Oahu. 'Olelo is subject to a \$3.7M cap that may increase annually based on the Consumer Price Index ("CPI"). This calculated cap amount is compared against the actual **3%** calculation, and the lower amount is remitted to 'Olelo.

As stated previously, the distribution of franchise fees collected are as follows:

1) 3% of gross revenues to the PEG access organization for the specific County where fees are collected;

In the case of 'Olelo, the cap is at **\$3.7** million plus the allowed CPI calculated increase, of which **25%** goes to HENC for educational **programming**, but 'Olelo has complained HENC does not properly account for the funds. **Any** remaining funds over the cap have been earmarked for the I-NET. Can we assume that those funds will now be folded into the "unencumbered balances" from the DCCA CATV division and earmarked for equitable distribution to neighbor island PEGs rather than sit in Oceanic Time Warner's trust account at First Hawaiian Trust?

2) 1% of gross revenues to the Hawaii Public Television Foundation (public Television **PBS**); and

3) 1% of standard service revenues to the DCCA

Note: This **is equal** to approximately 0.64% of **gross** revenues

Due to the differences in population **as well as** differences in cable services purchased by subscribers, franchise fees **vary** widely among the four Counties. Under current DCCA policy, the fees collected in each County remain in that County. The fees collected for each PEG access organization in 2002 were:

Hawaii	\$547,243.00
Kauai	\$270,569.00
Maui	\$608,510.00
Oahu	\$3,387,288.00

Franchise fees for PEG access collected in a particular County currently remain there for the benefit of its residents. There has been much debate regarding the issue of redistribution of franchise fees regardless of their source. Many members of the public support the current system, under which fees remain in the County in which they are collected. Others suggest that there should be some mechanism to redistribute franchise fees so that neighbor islands receive a larger percentage of the statewide total. They suggest that absent such redistribution, some areas of the neighbor islands are not able to receive even a minimal "baseline" of PEG access services.

The statement "the current system, under which fees remain in the County" **is** misleading. Currently, of the **4 1/2 %**, **1%** of franchise fees collected on neighbor islands goes to Hawaii Public Television Foundation on **Oahu** whose financial information is not subject to UIPA. DCCA CATV division receives .64% of the franchise fees, who is also residing on **Oahu**. It would appear that there is already "some mechanism to redistribute franchise fees".

In any event, it is clear that there are a number of areas which are underserved by the current system. These include islands such **as** Molokai and Lanai, rural areas on the neighbor islands such **as** Hana, and portions of **Oahu** such as the windward side. It is also clear that some of the recent successes in PEG access have occurred when PEG access

services are brought into communities where there is a strong need and support for them, such as Wai'anae and Palolo on Oahu.

In order to support additional funding for these services without increasing the amounts assessed to cable subscribers, DCCA will reallocate funds that are currently being collected to support its administration of cable regulation in Hawaii. In the past, up to \$500,000/yr. of those funds have been appropriated to support the INET. Since the INET is largely deployed, expenditures at that level are unlikely to be needed in the future. Accordingly, DCCA will seek to reallocate a portion of the amount currently collected to support cable administration, and make these additional funds available for PEG purposes

as described in the process below. The result will be an increase in funds available for PEG purposes, without an increase in cable subscribers' overall bills.

"unencumbered balances" from the Cable Television Division have been between **\$200,000.00 - \$750,000.00** annually as noted in the Auditor's report. The above only identifies "up to \$500,000/yr. of these funds. Proper wording is needed here to specify what portion of CATV's excesses will be specifically allocated to PEGs. Since the excesses resulting from the potential cap of 'Olelo funds are kept in Oceanic's trust account, it needs to be clarified if they will now be included in this redistribution process.

DCCA's Funding Plan : Additional funding to support cable access **in** underserved areas

DCCA will implement a three (3) year pilot program that will provide additional funding to meet the cable access needs of currently underserved **areas**. Such funding could be used to support additional access centers or for other programs which will enhance services in those areas.

Without knowing exactly what "***other programs which will enhance services in those areas***" would include makes it difficult to comment, therefore agree with this proposed funding plan. By simply saying "***funding could be used to support additional access centers***" also implies that they may not. Perhaps a better approach would be to guarantee a percentage "**shall**" be "***used to support additional access centers***" or under funded PEG Access organizations.

Criteria for the program will be developed by DCCA in consultation with the cable advisory committee. It is anticipated that the cable advisory committee will also assist in reviewing applications and making funding recommendations to the Director of DCCA. Funding will be available to current recipients of cable franchise fees, i.e., the four PEG organizations.

Seeing as PEG corporations are "producing" programs rather than just "**oversee the.... production --- of programs for any channels**", and some have devoted **in** excess of 12% of funds remaining of their operating funds after personnel and HENC allocations to "facilitated productions", perhaps these "facilitated production"

funds could be included in DCCA's funding plan and made available as equitable funding grants for certified PEG client productions of statewide interest for statewide PEG channel distribution. (see also Issues that need attention:)

§440G-3 Definitions. As used in ~~this~~ chapter, unless the context clearly requires otherwise:

"Access organization" **means** any nonprofit organization designated by the director to oversee the development, operation, **supervision**, management, production, or broadcasting **of** programs for any channels obtained under **section 440G-8**, **and** any **officers**, agents, **and** employees of such **an** organization with respect to matters within the course **and** scope of **their** employment by the access organization.

Does " i.e., the four PEG organizations" mean funding will be available ONLY to the PEGs or because it states" Funding will be available to current recipients of cable franchise fees" does that mean funds will be available to all current recipients, which in O'ahu's case includes DOE, UH, HAIS, Marlon Weidemeir etc.?

ISSUE#5: PEG Channel Resource

Currently, all PEGs have access to five **(5)** channels on the cable operator's cable systems in each County.

Please keep in mind that this changed in Decision and Order #261 from 10% of available channels for PEG use, which would now be 8 channels for analog cable, a gift of 3 channels to Oceanic Time Warner from past DCCA Director Kathryn Matayoshi, whose husband worked for AOL Time Warner CEO Steve Case's father at Case, Bigelow, Lombardi law firm and DCCA Cable Television Division administrator Clyde Sonobe, whose wife works for Time Warner Telecom, with no opportunity for public input on the giveaway.

The availability of consistent channel capacity has allowed statewide cablecasting capabilities for the State Legislature, University of Hawaii, and the Department of Education. By designating **2** channels for " E" purposes, both the UH and DOE are now able to develop and implement instructional curriculum that can be utilized by campuses on all islands. They are also able to take advantage **of** teaching resources residing on a particular island to reach students statewide. **This** results in leveraging not only personnel resources for statewide benefit, but also consistency in curriculum. For example, a calculus instructor on Maui will be able to reach students on all islands, increasing quality of curriculum. On ~~Oahu~~, 'Olelo ~~has~~ reached an agreement with the Hawaii Educational Networking Consortium ("**HENC**") to manage and program '~~Olelo's~~ two (2) "E" channels dedicated to the UH and DOE. HENC is composed of members representing the UH, DOE, East West Center ("**EW**C"), and the Hawaii Association of Independent Schools ("**HAIS**").

A significant milestone was reached in **August** 2003, when all PEG access organizations,

the UH, and DOE reached an agreement to implement consistent channel numbering for "E" channels statewide. UH programming can be viewed on channel **55** statewide, while DOE programming can be viewed on channel **56** statewide.

Statewide broadcast capability from the State Legislature has recently been improved by having broadcast feeds sent directly to the UH for statewide carriage on UH's **HITS** microwave network. **This** will result in more efficient transmission of live legislative broadcasts to the neighbor islands. In addition to broadcasts from the State Legislature, each **PEG** access organization has the resources to implement live broadcasts from their respective City/County councils and executive branch. At this time, not all PEGs have elected to implement live County government broadcasts.

PEGs can request additional channel capacity beyond the current allocation of five (5) channels. Requests for additional channel(s) must be accompanied with documented justification including, but not limited to, the following information: statistical data illustrating the use of existing channels, types of programming being cablecast on each channel, statistics on channel programming that is first **run** versus re-run, percentage of first run programming versus re-run programming, and percentage of time used for "bulletinboard".

The aforementioned list of documented justifications is sorely lacking any meaningful benchmarks.

What is missing from the above programming reporting requirements is:

- 1) Hours of **PEG** client produced v in-house produced
- 2) Number of local professionally produced programs v local **PEG** client produced programs
- 3) Hours of local v satellite feeds such as Deutsche Wella, NASA TV, Armed Forces News, **ARTS** channel etc.
- 4) Number of repeats of bulletin board segments (some repeat **3** or more ~~times~~ per hour for many hours)
- 5) Hours of promotion for client programs v in-house, satellite feeds and professionally produced
- 6) Hours of franchise area programming v neighbor island programming
- 7) Total hours of premiere franchise area **PEG** produced programs v their number of repeats.
- 8) Total hours (including repeats) of non locally produced programs (**by** channel [all]).
- 9) Number of hours of presented program premiere v repeat hours etc.

The issue of sustainability can be summarized by this question: “What would happen to each PEG organization if funding from franchise fees suddenly decreased significantly or disappeared completely?”

The question was first posed by the DCCA a few years ago **as** a discussion mechanism. The major item that prompted DCCA’s request for plans of self sufficiency was the evolution of technologies that compete with cable tv. At first, wireless cable companies were the primary competition but lacked the market share to significantly impact the cable operators. Currently, there is a technology that may present true competition **to** cable tv, without cable’s regulatory requirements: DBS. The **DBS** industry is currently represented by two major vendors, DirecTV and Echostar (Dish Network). If these service providers continue to gain market share, at the expense of cable tv companies, revenues to all beneficiaries of franchise fees will decrease. In addition to competitive technologies, there **is** also the potential of an evolving cable tv industry. If cable tv companies provided their services through the use of new or innovative technologies, such **as** Wireless Fidelity (“WI-FI”), would they still be held to requirements such **as** franchise fees? The development of new delivery systems and technologies will be a significant consideration in future regulatory policy.

The second item that affects sustainability relates to regulatory issues facing telecommunications / entertainment companies and the services they provide. For example, the FCC has recently determined that cable modem service (e.g. Oceanic’s Roadrunner) is **an** information service, not a cable service. Many jurisdictions, including the State, have questioned this opinion, which currently is being reviewed by the FCC and also being litigated in federal court. The cable modem issue illustrates the uncertainty in this area, i.e., that services currently assessed with franchise fees may not be assessed in the future. **This** uncertainty relating to designation of type of service and the applicability of franchise fees also holds true for services being developed and not yet deployed. There is no certainty in how the FCC will identify a new service, whether as an information service or a cable service.

Again, the DCCA initially posed this question to the PEGs **as** a discussion mechanism on the effects that evolving technologies and regulatory issues may have on their revenues. Although the DCCA has not required **any** specific actions on the part of the PEGs regarding this matter, a plan was requested from each PEG that included actions that would be initiated in case revenues from cable operators were severely restricted. DCCA encourages the PEGs to identify and pursue additional funding from other sources, such as through grants that are consistent with the overall PEG mission.

If a County takes over responsibility for PEG access, then it will be up to the County to ~~determine its policy on this issue~~

I can only say that if the Counties take over that I hope they are **more** strict in **making** the **PEGs** abide by their contractual obligations than **DCCA has** been. It appears that only 'Olelo attempted **to** fulfill their obligation to provide a self

sufficiency plan per their contract. Had I been the authority who received their attempt at a plan, I would have required them to do it over again. It was not a plan at all, but in essence a statement that **if** they are not provided with funds that they have to do nothing to acquire, then they will close the doors to the public they are charged with serving and funded by. That is not really what I would consider complying with their contract in the spirit of the agreement, though I have mentioned repeatedly the agreement is sorely lacking any meaningful reporting requirements.

ISSUE #7: Greater Community Participation

One of the primary goals of all PEG access organizations today is the extension of their services to all areas of their communities. This involves addressing the issue of physical access to the existing PEG facility i.e., how to provide services to residents who may not have easy access to resources either because of geography or other factors. The DCCA gives each PEG access organization discretion to select appropriate means to attain these goals.

Great caution should be exercised here to avoid the potential to segregate communities rather than "build" one larger one.

As witnessed by 'Olelo's segregation of the Public Channels on a racial basis, some communities get what results in preferential scheduling due to this segregation. There is less Hawaiian, Pacific Island, Native American and Indigenous LOCAL, programming being created by clients than the sum of all the other client programs. This segregation has resulted in more repeats of programming containing racebased content or issues than other types of content are afforded, and a disproportionate amount of pre-programming from a Pacific-island group that represents a scant fraction of one percent of the Pacific community in Hawaii.

In-house & facilitated production content has also shown racial and community-based preference. Satellite facilities provide more benefits to educational institution students than the rest of the general population in their community. DCCA needs to take a more proactive role by establishing benchmarks which prevent these potential inequities. Perhaps a management and financial audit will clarify these current inequities and provide the insight needed to draft proper guidelines for future satellite facility management and location.

The following are services currently being provided by some or all of the PEGs:

Remote Access Centers: Currently, some of the PEGs are considering or have implemented remote facilities to address the concern of accessibility to PEG resources.

For example on **Oahu**, 'Olelo has implemented remote sites in Kahuku, Waianae, and Palolo.

You left out LCC which has been a satellite facility since the beginning, which 'Olelo supported minimally. They have provided them with as little as \$29,000.00 a year while they were **allocating** in excess of **\$250,000.00** a year for their in-house productions.

Although these are not fully equivalent to 'Olelo's main facility in Honolulu, they do provide easier access to PEG services for residents.

Mobile Facilities: Equipping a mobile van with production capabilities is also being considered to address the needs of more remote geographic areas. This option provides tremendous opportunities **for** greater outreach.

This service has been "considered" for many years, the idea has been supported by the continued requests of their clients, with no progress evident to date. Mobile facilities should have been accomplished before the satellites and should be before anymore satellites are even considered. We have long suggested that 'Olelo retrofit a bus or trailer with a mini studio, remote cameras and a couple of non linear edit facilities to use as an outreach vehicle to **go** into communities to first test how much interest is there. If it proves to be popular in a community, only then should they consider a permanent satellite. We still await this logical approach to be implemented. We all know that money is not the barrier as the millions of dollars in their trust account is more than enough to accomplish the task and to do it right from the start with proper client and professional **input**. This must have been an evident possibility to the many legislators and state employees who had the opportunity to take a tour of the C-SPAN bus when it was here in Hawaii in the mid 90's.

Alternate Sites: It has been suggested that the PEGs explore working relationships with existing institutions that could extend the reach of their services. This could include collocating with an existing non-profit corporation whose operations could be complimentary. By creating such alliances, **the** public will **gain** added access to PEG services while the PEGs will benefit by incurring lower outreach costs due to collocation agreements.

In 'Olelo's case collocation with "institutions" has been accomplished. There is much concern that the end result has been yet even more funds going to the **"E"** (education) sector without properly acknowledging the portion of the funds ~~specifically for DOE usage. What sort of "non-profit corporation"~~ DCCA has in mind for partnering with needs to be spelled out. It is quite evident that the larger non-profits that only cater to other non-profits would not benefit the larger community equitably.

Facilitated Production: PEGs currently provide the public with the option of creating programming without becoming a certified producer. Such easy access services include staff supported "open mike" sessions as well as volunteer supported facilitated productions. These types of assisted services greatly expand and enhance the impact of PEG resources to their communities.

First off, it's "open mic" not "open mike". Secondly, a true "**open mic**" service should be available **all** hours the center is open with minimal barriers to access. "**O'ahu Speaks**" is what you are improperly referring to as "open mike", which is only available 16 of the **88** hours they are open. You are required to make a reservation, **so** it is not on a walk-in basis as implied by the slogan on their website:

*"Walk in
Pull up a chair,
Talk into the mic,
and share your message"*

You have cleverly minimized the heated argument over in-house productions by incorrectly referring to them as "volunteer supported facilitated productions" when the reality is that the major portion of these productions is facilitated by staff **utilizing** public funds. It would appear by **Issue #16** and your statement below, "The DCCA supports and encourages the outreach and extension of services undertaken by the PEGs, and will continue to do so in the future", that **DCCA** will continue to support these **content controlled** productions in spite of all the public concerns expressed regarding this potentially discriminatory practice which can and apparently has resulted in content control of the channels.

For **DCCA** to make a statement like "These types of assisted services greatly expand and enhance the impact of PEG resources to their communities" is pure conjecture because when you have a pie and you slice it into more and more slices, the pieces get smaller and smaller. If for instance you create more facilitated productions then there is less equipment, studio time, air time, staff and funds available to the other members of the "communities". Facilitated productions are not equitably available to the average Joe on the street, but for the non-profits, state departments and law makers that traditionally already have access to media either through their political status or funds provided already by the public as donations. If these same resources were devoted more to individual outreach and more individually tailored training, perhaps the aforementioned already served would be provided for by the trained individuals rather by paid staff. Also take into consideration, that every production done in-house by staff takes away a potential production and crew position from a trained individual, which the individual can use to hone his acquired skill(s). To me this practice has greatly constricted and decreased equitable access to the community as a whole. Again, perhaps a financial and management audit will make

this perfectly clear.

Equipment and Staffing: Regardless of the alternatives implemented, whether remote, mobile or collocated, the effectiveness of these options will be determined by their ability to deliver acceptable service levels to the end-user.

Who makes the determination on "their ability to deliver acceptable service levels to the end-user", and where are the benchmarks for what is considered "acceptable" ? Hopefully the legislative auditor!

Certain ~~minimum~~ equipment requirements have to be addressed including cameras, editing equipment and consistent programming formats, such as DVD, etc. More important to the success of this outreach initiative is the support provided by the PEG access organization that would accompany these possible alternatives. It is critical to the success of this effort that client/user support is readily available to assist wherever these alternatives are implemented.

You are correct in stating "that client/user support is readily available to assist wherever these alternatives are implemented", but the problem is that it is "readily available" it is just not being utilized sufficiently or equitably.

The DCCA supports and encourages the outreach and extension of services undertaken by the PEGs, and will continue to do so in the future.

I hope with more of an eye for equity.

If a County takes over responsibility for PEG access, then it will be up to the County to determine its policy on this issue.

ISSUE #8: Cooperation and Collaboration Among PEG Organizations

The DCCA strongly encourages the PEG entities to collaborate and cooperate in order to maximize the resources available to each. By working cooperatively, the PEGs will hopefully reduce redundant, resource consuming activities. Resources can be leveraged and efficiencies maximized in this type of environment. The following are areas the DCCA believes resources may be leveraged:

Equipment Resources: PEGs should implement a policy of notification when equipment is planned to be retired. This will provide the opportunity for another PEG to request the equipment instead of it being discarded or donated. A documented process needs to be implemented in order for there to be mutual agreement and understanding on the operational logistics. This will ensure an open and fair process.

Often retired equipment has wound up in staff's possession before any other entity knew of its availability. Perhaps the priority of recipients should be established, e.g.:

- 1) PEG Access corporations
- 2) Educational Institutions
- 3) Open bidding process by contributing clients
- 4) Staff purchase through open process

In addition to retired equipment, cooperative purchasing and sharing of equipment is encouraged. **This** may reduce overall costs for unique pieces of equipment that may be more practically purchased by all four PEGs with an understanding regarding their shared use.

Cameras are really the only piece of equipment that needs to be consistent for inter island client use.

Personnel Resources: The DCCA encourages PEGs to share technical / support resources.

This may simply be regularly scheduled "roundtables" where staff **from** each PEG meets to share ideas, experiences, etc. Or it can be structured instructional **sessions** where a trained resource presents information on a certain topic. These sessions **will** not only increase the expertise available in each PEG access center, but it will **also further** enhance the sense of community among the PEGs themselves.

One resource that desperately needs to be shared is a webmaster. It appears all PEG sites, except for Akaku's are given minimal attention when they should be updated daily. They should be looked at as a major part of outreach, training, client program promotion and publications efforts, but sadly are not.

Programming Resources: The DCCA supports the current agreement between the PEGs to share programming developed in their respective communities when it is appropriate. **As** issues of common interest develop, the exchange of viewpoints between the islands becomes more appropriate and relevant. The use and leveraging of common technologies is encouraged to expedite this exchange **of** viewpoints and ideas.

Programming resource sharing should include a mechanism for client produced programs to be distributed as the **first** priority. To date it appears the only facilitation of program sharing inter-island has been in regards to in-house **produced productions, the program** contributing clients have had to distribute their shows with their own money by their own means.

"Common technologies" needs to be defined as it is unclear if it is inclusive of electronic distribution of programs or other potential venues.

Promotional materials and PSAs could also be collaborated on and the PEGs and DCCA or the County overseer could collectively negotiate with **THE** Cable Provider (Time Warner Cable) for the promotions to be aired on channels other than the PEG channels, the result to be written into all decision and orders (franchise agreements) affecting Hawaii's PEGs.

ISSUE #9: PEG By-laws

Although the by-laws of the PEG organizations are similar in nature and content, there are some differences which reflect the unique requirements and needs of each access entity. For example, the number of board members varies due to the requirements of each board. Certain boards prefer a greater number of members, and have increased their board size, while others have retained the same number since the original formation of the organization. The DCCA is sensitive to the unique requirements of each PEG access organization and will work with them to address their specific requirements, while still maintaining an appropriate level of consistency.

The unique requirements of 'Olelo's board has been to keep the hui as small as possible to keep as much information from the public **as** possible. This "unique requirement" must not be allowed to continue. The board size should be increased giving special attention on including PEG Access **users** on the board as already provided for in their bylaws, but sadly ignored by most PEG entities and the DCCA.

The DCCA expects each PEG access organization to comply with their by-laws to remove the potential for complaints and inconsistent operations.

You say you wish the PEGs to comply with their bylaws only to "remove the potential for complaints and inconsistent operations". What about the potential to be in violation of state and federal law?

Specifically, the DCCA is concerned with the process by which its board meetings are conducted and strongly encourages the adoption and implementation of procedural rules, such **as** Roberts Rules of Order. Adoption and adherence to such rules will facilitate more productive, fair, and efficient meetings.

As pointed out in response to the original "Discussion Document" regarding a PEG plan most PEGs already have adopted and purport to adhere to Roberts Rules of Order but the reality contradicts that. What will be the mechanism to make sure they do? What will the penalties be for noncompliance? These need to be documented. Perhaps DCCA should appoint an ex officio director that would be required to report back to DCCA after each meeting regarding the board's actions

pertaining to this matter.

If a County exercises the option to oversee the PEG entity, then it will be up to the County to determine the administration and management of the PEG bylaw process.

As state law gives the DCCA authority to designate the nonprofit corporations and the bylaws are governing documents required for submission and updating by the Internal Revenue Service and the state, it appears that it would take a legislative act to change this process. Perhaps it would be best to leave the bylaw process **as** is.

If the County declines that option, then **DCCA** will continue its current policy **of** attempting to accommodate the unique requirements of each entity, while maintaining a degree of uniformity among the four entities.

The statement "DCCA will continue its current policy **of** attempting to accommodate the unique requirements of each entity, while maintaining a degree of uniformity among the four entities" begs some questions. 1) What is the current policy for "attempting to accommodate the unique requirements" and 2) what is the current "degree of uniformity" you wish to maintain? These too need to be documented.

ISSUE #10: "Sunshine" law requirements under HRS Chapter 92F (Uniform Information Practices Act) and Chapter 92 (Public Agency Meetings and Records)

All PEGs have stated that they comply with HRS chapter 92F, the UIPA. The Office of Information Practices determined in an opinion dated September 6, 2002 that Hoike and 'Olelo are subject to and must abide by the UIPA.

You say they "have stated", but have you required their statements be put in writing? I think that should be required.

The PEGs vary in their approach to the issues addressed by HRS chapter 92 regarding Public Agency Meetings and Records. For example, some PEGs have adopted policies regarding the procedure for conducting public meetings which appear to be more restrictive than the requirements of HRS chapter 92. Some community members and users of PEG access services have expressed concern about what they perceive **as** a lack of openness at the PEGs.

The DCCA understands that compliance with HRS chapters 92F and 92 can pose a financial and staff burden on the PEGs.

~~If they were required to post their documents online, there would be no "financial and staff burden", it would actually give them more time to concentrate on their current mission".~~

However, DCCA believes that openness and

accountability are crucial. Accordingly, for those PEG entities that remain under DCCA's oversight, DCCA will require that they adopt bylaws and policies which comply with the requirements of HRS chapters 92F and 92. For those PEG entities in counties that elect to oversee the PEG function, it will be up to the County to determine the policy on these issues that it deems appropriate.

As DCCA, not counties, still has the authority to designate the PEG corporations under HRS 440g, it would take legislation to repeal the clause. By what authority does DCCA have the authority to hand over designation power to the counties? If DCCA hands over that authority will they retain the authority to mandate that the 3% of funds go specifically for PEG Access purposes?

ISSUE #11: Daily operational procedures –responsibility of each PEG

Although the DCCA recognizes the unique needs of all four PEG access organizations, it strongly encourages the implementation of written operational guidelines that **address** certain significant issues. The existence of written guidelines on these issues helps facilitate transparency and consistent application of the policies of each PEG. For example, the daily operational procedures for all PEGs should include reasonable hours of operation. Other issues that should be addressed in written policies include:

- Frequency of scheduling for first time programming vs re-runs;
- Sign-out and use of equipment;
- Content disclaimer; and
- Rules governing political or campaign programming.

There needs to be written policies on PEG centers' adherence to their own operating procedures which they require clients to abide by. Perhaps this should be a contractual mandate from whomever has oversight (DCCA or County). Policies are needed for acquiring free services, either training or facilitated productions, **as** there are currently none and are given out on a case by case basis which allows for discrimination. Some of the possible discriminatory practices are covered under federal rules and guidelines, but are not adhered to. Whomever is the overseer of PEGs should be responsible for **making** absolutely sure that the actions and policies of the PEGs are truly in accordance with state and federal law per their contracts and penalties for violations should be spelled out in the contracts. The contracts should be amended by requiring Operating Procedures be a reporting requirement and be submitted any time there is a change. It should also be required that the **board(s)** approve any changes to the operating procedures.

ISSUE #12: Development of technical standards

The DCCA encourages PEGs to work cooperatively to develop consistent technical standards. These could include a common tape playback format, producer certification

requirements, and equipment use certification. The creation of such technical standards will result in the following benefits:

- Similarly trained **staff**;
- Cross support between organizations ;
- Additional resources during disasters and emergencies; and
- Potential purchasing benefits such as volume procurement.

There would be a major cost saving in Personnel Resources by requiring PEGs to collaborate on their training methods, materials, certification processes and all client required forms. I feel it is imperative for the Hawai'i PEGs to first set these resource sharing benchmarks **so** they result in the clients' ability to use equipment statewide resulting in more diversity of program content in all counties.

Promotional materials and PSAs could also be collaborated on and the PEGs and DCCA or the County overseer could collectively negotiate with **THE** Cable Provider (Time Warner Cable) for the promotions to be aired on channels other than the PEG channels, the result to be written into all decision and orders affecting Hawaii's PEGs.

ISSUE #13: Review of connectivity (PEG Network) currently provided by TWE

The DCCA is currently working with Oceanic Time Warner Cable to review the interconnections that make up the PEG Network in all Counties. The PEG Network is the means by which all PEG programming is **sent** to and received by the cable operator's headend facility in each County. Once the PEG programming is received at the cable operator's facility, it is then inserted into the channel program lineup and distributed to subscribers along with other programming.

The following interconnections comprise the PEG Network:

- PEG access organization to the cable operator's headend facility;
- UH and DOE to PEG organization, or directly to cable operator's headend facility; and
- County government to PEG organization, **or** directly to cable operator's headend facility.

In most of the counties, the programming from the UH, DOE and government are consolidated at the PEG facility then sent on to the cable operator's facility. Although this has been historically done, the DCCA will consider other options acknowledging that

there may be costs that would need to be addressed by the requesting entities.

Without knowing what "DCCA will consider" as "other options" makes it impossible to comment on specifics. Please provide specific "options" DCCA will consider and spell out any and all "requesting entities".

Connectivity provided by AOL Time Warner Cable and AOL Time Warner Telecom is a most important component of this plan in order to implement many of the other

components outlined in the other issues.

The aforementioned ethics issues of the CATV administrator & past DCCA director will have to be resolved before DCCA can address the specific issues surrounding statewide connectivity.

Without proper accounting of the I-NET infrastructure, even after requests from state senators of DCCA, it is impossible to know exactly what is in place now yet alone potential future options.

There appears to be a major imbalance of allocations to Neighbor islands. There are no county government to PEG connections, though there are on O'ahu. This is not equitable, and gives the appearance that DCCA is not advocating for the truly underserved.

Until an independent franchise compliance audit is performed, neither DCCA nor the public can know what PEG/INET network resources are available, or what connections on what terms are available.

The current infrastructure needs to be evaluated in context of use by each island and between counties.

I-NET connections should be equitable statewide, on each island and between all islands. This would accommodate an infrastructure that would enable implementation of Issue # 14 and program sharing amongst PEGs statewide.

Perhaps once the CAC is in place, this issue can be addressed with more openness & fairness.

ISSUE #14: More Civic Affairs Programming (**CSPAN** for Hawaii)

Some members of the community have identified a need for more civic affairs programming including State and County legislative, executive and judicial proceedings, as well as community based activities such as neighborhood board meetings.

The goal is to provide statewide distribution of civic / public affairs television programming as a means to encourage democratic participation and public interest through cablecasting. This endeavor will require the commitment and cooperation of many organizations including coordination of their resources.

There are many alternative approaches to accomplish these objectives, such as the expansion and enhancement of " Gprogramming currently provided by each of the four PEG access organizations. Another option which has been suggested is the creation of a separate, independent non-profit entity which would produce and distribute public affairs programming in Hawaii, similar to what CSPAN does on a national level. This non-profit would be responsible for managing the creation and distribution of public affairs

programming on a statewide basis.

The idea of a CSPAN for Hawaii has potential, but many significant issues need to be addressed. These include funding, the provision of channel capacity, and the extent to which such an entity would duplicate services that are (or could be) provided by the PEG access organizations. Before the CSPAN idea can move forward, there must be a dialog on these issues between the affected parties, including proponents of the CSPAN idea, the cable operator, government agencies, and the PEG entities.

Because of the last sentence it would appear this Issue has been put on hold as far as DCCA is concerned. Perhaps once the Cable Advisory Committee members have been appointed, this issue can be revived.

However it is accomplished, it must be done as transparently as possible — and with the input of the public — to avoid the potential for its being used as a tool for propaganda.

ISSUE #15: Resolution of complaints concerning PEGs

The DCCA recognizes the private, non-profit status of the PEG organizations, and accordingly relies on the PEG's board of directors, officers and employees to be responsible for overall client satisfaction, including the satisfactory resolution of complaints received regarding its operations and management.

History shows that this reliance is only a means for DCCA to avoid liability or give the false impression that they are not controlling the PEGs.

However, situations have arisen where the DCCA's involvement is required to assist in the resolution of inquiries and complaints received from PEG producers or other constituents. In these instances, the DCCA will attempt to facilitate a reasonable solution / compromise that address the concerns raised while also respecting the policy and decision making of the PEG's board of directors. To accomplish this objective, DCCA will relay complaints to the PEGs and request a copy of the responses to those complaints to determine whether additional follow up is needed. The appropriate resolution of complaints by the PEGs is a factor taken into account by the DCCA in evaluating the performance of each PEG.

The reality of the aforementioned process that I have witnessed is that DCCA does indeed forward the concerns and the PEG does cc: DCCA, but if the complainant expressly states in writing to DCCA that the response is not satisfactory, there has ~~not been any additional follow up~~ by DCCA. Many issues still remain in limbo.

When was the last time each PEG was evaluated? What other factors does DCCA take into account? Are the evaluations available as public documents? Has the DCCA documented their concerns that the Operating Policies of the PEG

organizations are discriminatory, or at least provide for the opportunity for the **PEGs** to discriminate? Perhaps the statements in **PEG** bylaws:

“To this end the Corporation shall:

- ⌘ maintain those cable channels dedicated to public, educational and governmental use in a manner that is **free** of censorship and control of program content, except **as** necessary to comply with state or federal law,
- ⌘ provide a range of resources for program production for the users of these channels, and
- ⌘ develop and enforce such **rules** and policies that will ensure equitable access to these channels and production consistent with applicable state or federal laws.”

should also be in the **DCCA/PEG** agreements (aka contracts).

If a **County** declines the option to oversee the PEG function, DCCA will continue with its current policies regarding resolution of complaints concerning PEG access organizations.

If a **County** exercises the option, then it will be up to the County to determine its policy on this issue.

Per HRS 440g it is currently **DCCA's** responsibility to designate the **PEGs**, and the provision for first come, nondiscriminatory access is in the **DCCA's** rules. By what process must the transfer of responsibilities be made?

ISSUE #16: Role of **PEGs** : Production versus Facilitation

As the needs of their clients have evolved, PEG access organizations have reviewed and assessed how they can continue to serve their unique communities. In addition to their mission of training, developing production skills, and providing a forum for exchange of ideas, PEG access organizations have also been involved in activities that some have deemed non-traditional. Examples include: (1) responding to local government RFPs for video and captioning services which results in competition with private organizations, and (2) the development of programming utilizing the organization's resources, which could result in decreased availability of equipment or other resources (such as air time) to

the public users of these access facilities. The development of such programming is sometimes referred to as “community building”.

The DCCA has given the PEGs discretion to determine whether, and to what extent, they ~~should engage in such activities. The DCCA will continue to allow the PEGs discretion~~ in this area.

DCCA has stated in writing that they are using their authority to allow their majority appointed board directors to continue this discriminatory practice, as has

been pointed out on many occasions and is on file in the **director's** office. Please note that nowhere in governance documents, **legislation** or state & federal law has **DCCA** been given the authority to allow PEGs to "create" programs of their own choosing.

If **DCCA** chooses to allow for this they must also require that it be done according to state and federal law and that the criteria for such practice be spelled out in the "rules and policies" (aka Operating Procedures) of the corporations.

If a County accepts oversight of the PEG, it will be **up to** that County to determine the appropriate policy for its PEG organization.

ISSUE #17: Independent Third Party Reviews

Each PEG entity is required to submit annual reports to DCCA including financial statements, operational plan and budget, equipment inventory, and a year-end activity report.

However, some members **of** the public have suggested that the PEGs should periodically be subjected to the more detailed evaluation that an independent third party review would

provide. DCCA agrees with this suggestion, and will implement a program to provide for

the PEGs to be reviewed periodically by an independent third party. Such a review could include issues such **as** whether the PEGs are complying with the terms **of** their contracts with DCCA (or the County) and that the funds they receive are used for their intended purposes. DCCA expects that one PEG would be reviewed each year, so that each PEG would be reviewed every four years.

Even if a county exercises the option to oversee the PEG entity, DCCA would retain the right to have reviews performed on that PEG. DCCA believes that the state **must** retain the ability to require such reviews in order to ensure that cable subscribers' monies are being used appropriately.

In the line above: "Such a review could include issues such **as** whether the PEGs are complying with the terms of their contracts with DCCA (or the County) and that the finds they receive are used for their intended purposes" *the word "could" should be changed to "shall".

~~It appears that the 2 issues listed above are actually the responsibility of DCCA in~~
their own annual review before extending the contract for another year. Are **DCCA** annual reviews of PEGs public documents, if they exist at all?

Exactly what does the term "independent third party" mean? It appears it means

that the auditor would have to be independent from both the PEG and the DCCA. Does that mean that because DCCA is a state agency the state auditor can not be considered independent, or because the auditor is attached to the legislature and not the executive branch as is DCCA, then can the Legislative Auditor perform the audit?

Issues that need attention:

- 1) Contracts with the PEGs are sorely lacking any meaningful reporting requirements that result in enlightening readers on the actual performance of the PEGs in regards to fulfilment of their mission.
 - 2) DCCA's historical "slow as possible" follow through on complaints, records requests and concerns regarding PEGs needs to be addressed, somehow. Possibly with benchmarks they should follow, drafted through public input.
 - 3) Records retention by the PEGs needs to be addressed. Many documents get lost, most likely accidentally on purpose. Are, or should they be required to follow DAGS records retention rules?
 - 4) Reporting Requirements should be amended immediately to require PEGs to submit required documents in electronic format, and that if posted on their websites they may simply provide the URL instead. This would help reduce paper in the spirit of the Paperwork Reduction Act, and reduce the need to purchase file cabinets, thus freeing up space at DCCA.
 - 5) If DCCA does not support previous issue, then it should explain its reasons and have a public file cabinet like KHET does that the public can access on a walk-in basis.
 - 6) As DCCA appears to have opened themselves up to additional liability by stating they are allowing 'Olelo to continue facilitated productions, and because 'Olelo continues to do it in an already reported apparently discriminatory manner (because of no documented criteria), I feel it would be most prudent to utilize the funds set aside for these facilitated productions for an IRS sanctioned process. Perhaps pool funds from statewide PEGs & PBSHawai'i with the intent of making them available through an independent third party panel to distribute grants for the purpose of creating productions of statewide interest and value. The grants would be available to any production utilizing PEG training certified producers, through an open independent third party process.
-

2003-2-014



"McKinley, Stuart E" [REDACTED] on 12/10/2003 04:04:05 PM

To: <cabletv@dcca.hawaii.gov>
cc:

Subject DRAFT PEG Access Governance Plan

Good People:

Thank you for this opportunity to comment on the draft plan referenced above.

I am a certified producer of "Labor's POV," a weekly program for, by, and about Honolulu's labor community.

My program has aired for nearly two years on 'Olelo Channel 54.

My compliments to whomever worked hard to draft this plan; their efforts are appreciated. I largely agree with the draft.

Where I disagree:

1) On the efficacy of county governance. The proposal is to provide each county with \$30,000/yr. to provide local governance of the county's PEG Access organization. While I agree that local governance is generally preferable to distant control, I'm uncertain what governance could be purchased with so low a sum. Further, I believe that PEG funds, given the constant need for revenue at the county level, could easily become a political football. The current cable revenues, almost \$5,000,000, look insignificant from the state's perspective. From any county's perspective, it's a windfall. My proposal: Retain state governance to assure uniformity; give the \$120,000/yr. directly to the stations to support their internal governance processes, i.e., their advisory board, their management, their communications with their constituency.

2) On strict conformity to governance by political sub-division. I've been assured that this is not an original idea, but allow me to advocate for the inclusion of Moloka'i in the O'ahu PEG kuleana. To be honest, I don't know if this makes operational sense. For example, do Moloka'i residents receive 'Olelo Channels? Could 'Olelo satisfy their need for immediate service? Would Moloka'i accept 'Olelo's "culture"? My proposal: Obviously, this proposal requires stricter scrutiny, but I would like to see the thought entertained, debated, and

~~decided~~ over the ~~next~~ year or two. Moloka'I is ~~much more~~ easily ~~serviced~~ and ~~supported by~~ 'Olelo ~~than by~~ Akaku. This would solve one of Akaku's enduring problems.

3) **On the establishment of user representative positions on each board.** ~~The~~ proposal to permit ~~certified~~ producers to elect ~~their own~~ representative to the board ~~has~~ considerable ~~merit~~. However, the proposal needs further definition: who is eligible to ~~run and~~ who, ~~precisely, may~~ vote? **My proposal: I think** the proposal is too **timid**. **I advocate** that another seat **should be allocated** to an **elected representative** of each station's **staff**. I also believe that ~~those who~~ actively help to produce shows as camera ~~operators~~, ~~editors~~, and ~~crew~~ should also have a representative voice **on each board**.

4) **On the response to advancing technology.** Realizing that this ~~may not be ours~~ to decide at the ~~state~~ level, I would ~~advocate that~~ we, the public, ~~assert our~~ right to license ~~the use of the public airwaves by direct-tv and~~ other satellite or ~~internet-based~~ providers. **They should contribute** a "fair share" of their revenue to and carry public access programming.

Further, ~~PEG stations~~ should be required to have plans in place to ~~take advantage of~~ **advancing** technology, ~~so that~~ they are ~~never~~ very far ~~behind the~~ latest production or broadcast technology.

5) **On a baseline of services for each island.** The draft plan makes ~~no~~ mention of establishing a baseline service model for ~~each island~~. The configuration ~~of the facility and the proper allocation of funds will~~ always be subject to ~~debate, however~~ each island, **I believe** should have a basic ~~minimum level of equipment, staff, and~~ programs **available** to their **community**.

Again, thank you for ~~your~~ efforts in ~~this~~ matter. Mahalo a nui loa for this chance to ~~share my~~ thoughts.

Mele Kalikimaka e Hauoli Makahiki Hou,

Stuart E. McKinley

Producer

"Labor's POV"

'Olelo **Community** Television

2003-2-015



Cheryl Kaster [REDACTED] on 12/10/2003 04:11:31 PM

To: cabletv@dcca.hawaii.gov
cc: csonobe@dcca.state.hi.us, mrecktenwald@dcca.hawaii.gov

Subject: Comments on DCCA Peg Plan

My comments are in bold and underlined.

In the Draft Peg Plan, Introduction, it states:

*At the same time, the public comment process identified many challenges and areas for improvement. **These** included: ...*

*(3) a need for a more participatory governance system for PEGs, both **in** the process of selecting board members and in the rules governing how **the** PEGs conduct business,*

This is addressed in:

ISSUE #2: Governance - **PEG Board** Appointment Process

*...The DCCA has acknowledged the autonomy and **decision** making authority of each PEG board of directors, and accordingly has not involved itself in the **daily** operational and **financial** management of the access organization.*

While "autonomy" of the BOD may be seen as a desirable thing (**especially** by the BOD), it **presumes** that the members of the board are actually qualified, willing and able to exercise the oversight that **is** need over a multimillion dollar organization. The current BOD of 'Olelo has repeatedly demonstrated that they are not, resulting in an organization that is **run** entirely by the BOD chair and the CEO.

*Each PEG board is responsible for all financial and operational management matters, including issues such **as** the uses of financial and equipment resources, and the resolution of complaints from its producers and interested persons.*

The 'Olelo BOD has repeatedly demonstrated that it **is** not accessible to complaints from producers and other interested persons. They are repeatedly in violation of their own bylaws and conduct business **of** the corporation outside **of** the "open meetings" and without the benefit of minutes of the Executive Committee which is authorized to conduct business in between the board meetings. A few years **ago** they set up the Access Services Advisory Committee for the stated purpose of being representatives between the producer community and the Program Committee/Board of Directors. The reality of this organization is that it is merely "window dressing" and has never been able to accomplish the primary task of setting up a means of communication with the producer community. 'Olelo has the technology and the access to the information but has never been able to find

a way to effectively communicate with the producers .

*The DCCA and each PEG organization have a contract currently in force that is automatically renewed annually unless terminated or modified. As board vacancies occur, each PEG access organization initiates a nomination process that includes public notice of the vacancy, review of applications received, selection of nominee, and presentation of recommended nominee to the DCCA or cable operator for appointment to the board. The DCCA and the cable operator have the discretion to accept **or** reject the recommendation. DCCA and ~~the~~ cable operator also have the authority to remove directors once they are appointed*

We all know that the nomination process is "political," based on things other than an individual's knowledge of board governance or knowledge of the organization and its purposes. The Chair of the Board is incapable of understanding the Bylaws and following the same. The nominating committee included the very person (the CEO) who ultimately serves as the pleasure of the board. The board is truly a "volunteer" board and are merely political appointments who are deemed to be those who will go along with the status quo.

A recent opinion by the Office of Information Practices ("OIP") stated that the DCCA's board appointment authority was a factor in OIP's opinion that PEGs were an agency for Uniform Information Practices Act ("UIPA") purposes. Some observers believe that this opinion has jeopardized the private, non-profit status of PEG access organizations and have argued vigorously for the board appointment process to be amended by removing the DCCA's appointment authority.

Well, this can only jeopardize the private, non-profit status IF they have made the information available to the IRS, along with the information that the 'Olelo BOD has openly changed the purpose of the organization, without doing so formally or notifying the IRS of the change in purpose and activity.

The issue of governance, specifically the appointment of board directors, has been a much debated topic over the past few years. One argument in favor of continued DCCA involvement concerns the funding of the PEGs. Franchise fees are the result of Decisions and Orders issued by the DCCA to the cable operator. The cable operator is ordered by the DCCA to calculate, collect, and distribute funds from cable subscribers for PEG purposes. The DCCA has historically believed that it needs to exercise oversight of the expenditure of these funds. The current board appointment process provides the DCCA with some amount of oversight, both through the selection of directors and through the power of removing directors. Proponents of change argue that the DCCA retains adequate oversight through the annual reporting and contract renewal process. They believe that the DCCA has adequate oversight by the fact that the contract can be renegotiated or not renewed

If DCCA retains oversight as it has now, it **MUST** rethink the degree to which it will

hold the BOD's accountable. The way it stands right now, any complaint against the BOD is answered by the CEO. This is no right. The board needs to be able to answer for itself. The fact that they cannot/will not merely demonstrates that they are merely a "form" of a Board and exert no true governance over the organization, instead merely attending a meeting every three months, if they even do that. and rubber stamping the initiatives presented by the CEO.

One issue that became apparent through the public comment proceedings is that there is a significant sense of alienation on the part of some users of PEG access. These users feel that they do not have a real voice in the governance of the PEG entities. Their frustration is reflected, among other things, in a number of complaints made against the PEG entities

This is true. With regards to 'Olelo, the present Chair has, in the past, verbalized an open disdain for producers.

It is the conclusion of DCCA that the present system provides a degree of oversight and accountability which is appropriate and necessary.

I disagree. The oversight by DCCA has not been adequate. If it were, the BOD of 'Olelo would not be the rubber stamp that it is. Oversight doesn't mean you need to tell them "what" to do, but rather you need to insure they know "how" to exercise the governance and to be reminded that the indemnity clause in the bylaws does not mean they are not liable for negligence on their part. Simply by the fact that DCCA "nicks" one of the "political" nominations selected by the board, does not, in my opinion equate to "oversight."

However, the system should be modified to provide for a greater diversity of views on the boards of the PEGs.

DCCA's Governance Plan: If the County accepts the opportunity to oversee the PEG entity, then it shall be up to the County to determine the appropriate selection process for board members in that County.

If a County declines the opportunity to oversee the PEG entity, then the current system of PEG governance will remain in effect, with one change. One of the positions on each board that is currently selected by the director of DCCA will instead be selected by an open election run by each PEG entity. The voters in that election will be limited to: (1) anyone who is currently certified as a producer at the PEG entity, and (2) anyone who has submitted a tape for broadcast by the PEG entity during the past year.

I'm not sure what the point of this is if the new group of voters would be voting for the same old political nominations that have been presented in the past. Three members of the board need to be from a group of certified clients (not only producers) and the definition of who is eligible to serve and vote needs to be clarified. And those three positions should be filled by popular vote of active clients. Others, in responding to this proposed plan have given good definitions as to what should the criteria for serving and/or voting.

I believe the solution suggested above by DCCA is a demonstration of the fact that

even DCCA doesn't fully understand or appreciate the process of being a "P" client in the PEG access organizations. If DCCA did truly understand, it would be more responsive and willing to exercise more oversight.

Currently, there are positions on each of the PEG entity boards which will need to be filled on June 30, 2004, and which are scheduled to be selected by the Director of DCCA. Under DCCA's plan, the first of those positions on each board will be selected using this election process. The PEGs shall be required to amend their bylaws subject to approval of DCCA to establish the election process prior to that time.

How exactly can they do that when they can't get enough of their members ('Olelo) to attend a board meeting in order to amend the bylaws? That, in and of itself, should be a clear indication to DCCA that there is something very wrong with the method by which the BOD members are selected.

(4) a need for DCCA to receive ongoing input from the community on issues relating to PEG access,
and

What is the point of the input if it is only referred on to 'Olelo and answered by the CEO and the BOD is not held accountable? We already know what the answers from the CEO will be.

(5) a need for periodic, independent review of PEG operations.

There needs to be an management and financial audit by the Legislative Auditor. The current BOD members have such far-reaching contacts throughout the good ole boy system of Hawaii that it would be practically impossible to find a truly independent auditor. All PEG organizations must be required to submit reports to actually demonstrate how effective their access services are. They must be held accountable and that accountability must start with the BOD.

Regardless of the other sections of the Plan, if this one area, governance, is not structure so as to insure the appointment of knowledgeable, concerned and accountable board members, including three PEG clients, it really doesn't matter what the rest of the plan says. The BOD is the foundation of governance. If the BOD is weak and ineffectual, essentially a "rubber stamp" for the CEO as the 'Olelo BOD is, then none of the other portions of the plan will make a difference and if DCCA refuses to put some "teeth" in its oversight, then all the good intentions written on paper will have no effect.

Cheryl Kaster

'ole Certified Producer

Camera Tech, Editor, Studio



Mark E Recktenwald
12/10/2003 04:57 PM

To: CableDO
cc:
Subject Re: Comments on the DCCA's Draft Plan For PEG Access

2003-2-016

—Forwarded by Mark E Recktenwald/DCCA on 12/10/2003 04:57 PM —



12/10/2003 03:54 PM

To: mrecktenwald@dcca.hawaii.gov
cc:
Subject: Re: Comments on the DCCA's Draft Plan For PEG Access

From:
David Rav Mulinix



<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

To:
Mark Recktenwald, Director, Commerce and Consumer Affairs

Dear Mr. Recktenwald,

I have reviewed the Department of Commerce and Consumer Affairs' Draft Plan For Public, Education, and Government Access and I have a few comments in the following areas:

2: Governance - PEG Board Appointment Process

I strongly support the idea of having elected Community Producers on Olelo's Board, however I feel that the number should be increased to at least three elected Community Producers on Olelo's Board. Community Producers are the most knowledgeable of how Olelo does and does not work. Their insight and experience should be a valuable asset to Olelo's Board. I believe many of the problems that Olelo is having with Community Producers is because they are cut out of the decision making process. Including Community Producers in the decision making process will go along way toward alleviating the problems this has caused.

9: PEG By-laws

I agree that Olelo's Board should adhere to their bylaws.

10: "Sunshine" law requirements under HRS Chapter 92F and Chapter 92

I support the idea of Olelo functioning under Sunshine law. There are serious management problems at Olelo. Requiring Olelo to function under Sunshine law would help to alleviate some of those problems.

11: Daily operational procedures – responsibility of each PEG

I ~~am~~ not sure if ~~this~~ goes here, however ~~this~~ is an issue that I feel the DCCA needs to address. I worked for Olelo for four years. During the last two years Olelo's current CEO did not adhere to even basic personnel policies, in regards to the fair and equitable treatment of ~~staff~~. I feel that it is important the DCCA include in ~~this~~ plan some assurances that Olelo's management must follow fair and equitable personnel policies. A suggestion that was made to ~~Oleo's~~ Board by several former ~~Olelo's~~ employees was that Olelo's Board ~~form a~~ Personnel Committee and that that committee hire a professional personnel manager and that manager ~~answer~~ directly to the Personnel Committee, not Olelo's CEO. ~~Former~~ Olelo personnel managers acknowledged to ~~staff~~ that Olelo's CEO was not following proper personnel policies, but because they answered to the CEO there was nothing they could do. ~~Staff~~ ~~tried~~ going to the Board to resolve inequitable and unfair treatment, but Board Members said they did not get involved in the day-to-day operations. ~~This~~ left ~~staff~~ with nowhere to go to get a fair and unbiased hearing of their concerns about their unfair and inequitable treatment by Olelo's CEO.

15: Resolution of complaints concerning PEGs

I have been a community television producer for some **10** years. I have been ~~an~~ elected member of Olelo's Access Services Advisory Committee (ASAC) for the last four years. ASAC is made up of Olelo Board Member and Community Producers.

A concern of many Community Producers is that they receive fair and equitable treatment by Olelo's management. Since I have been associated with Olelo I have witnessed Olelo's current CEO not treat ~~all~~ Community Producers fairly and equitably, there is some bias there. To ensure fairness ASAC got Olelo's Board ~~to~~ develop Written suspension policies and ~~an~~ appeals process. Although ~~this~~ was a good step forward, the current policies have a gaping hole in them.

The concern of Community Producers was that Olelo's current CEO would not treat ~~them~~ fairly, but in the current suspension procedures Olelo's CEO ~~has~~ the ~~final~~ say. If a Community Producer does not feel the decision of the CEO is fair then they have to take their concern to arbitration. The problem with arbitration is that many Community Producers cannot afford to pay for arbitration.

ASAC's suggestion to Olelo's Board, that was rejected by Olelo's Board, is that after Olelo's ~~CEO~~ makes a decision and if the Community Producer still believes the decision is not fair, then the next step in the appeals process would be for ASAC to review the decision before arbitration. By adding ~~this~~ step into the appeals process it includes Olelo Board Members and Community Producers working together to solve the problem and come up with a fair decision. ~~An~~ added benefit to this approach is that this should also help to alleviate some of the suspicion about ~~Olelo's Management and Board. I would like to see this step added to the resolution of~~ complaints process.

17: Independent Third ~~Party~~ Reviews (AUDIT)

I support the idea of **a** third party review of Olelo. Olelo is **using** public monies, but there is no oversight of how those finds are being spent. There have been questioned raised **as** to how Olelo is spending these public monies. **An** audit would help to ensure finds are being spent properly.

My thanks to you **and your** staff for taking the time to develop this plan for **PEG** access

David **Ray** Mulinix

2003-2-017



"LurlineMcGregor" <LMCGREGOR@olelo.org> on 12/10/2003 04:50:01 PM

To: <cabletv@dcca.hawaii.gov>
cc:

Subject: comments on 11/03 DCCA Draft PEG Plan

Aloha,

This email is to respond at least briefly to the 11/03 draft of the DCCA Plan for PEG Access. The turnaround time for comment did not allow for the 'Ölelo Board of Directors to meet, either in committee or as a whole to discuss a response to the draft. The following comments therefore do not necessarily represent 'Ölelo's formal position on any of the issues.

Because the proposals in the Plan address areas about which 'Ölelo has not specifically had concerns in the past, we would not, in any event, have reason to provide extensive feedback. These few comments will therefore be limited to those proposals for which we have observations and suggestions.

PEG Oversight

Without accompanying oversight of cable regulation, it does not seem that counties will receive any meaningful authority over PEGs if they decide to assume PEG oversight. Rather, they will only assume PEG liabilities and will have to be extra judicious in assuring that their use of PEG resources does not conflict with PEG First Amendment requirements. It may be prudent to further anticipate how relationships between PEGs and county governments may change and address this before implementing this proposal.

PEG Board Appointment Process

'Ölelo Community Television is a multimillion dollar 501(c)(3) nonprofit corporation for which its Board of Directors assumes full fiduciary liability. The members of the board are not compensated in any way, yet they each assume an enormous amount of personal responsibility for the proper operation and oversight of the organization. 'Ölelo created an Access Services Advisory Committee five years ago to assure that producers' voices would be heard. While this committee, including its election process, has worked with mixed results, it has nevertheless given voice to producers and assured their participation in decisions that affect them. Based on this experience versus the larger roles and responsibilities of board members, it does not appear that the appointment of a single elected producer to the board will help to resolve any of the issues described in this draft plan.

Funding

It is very generous of DCCA to propose the use of INET funds to develop PEG resources in underserved communities in Hawai'i. 'Ölelo's greatest concern about this proposal is that DCCA not have to go through the Legislature for approval. All PEG directors have expressed a specific desire to deal with PEG issues outside of the legislative arena and this proposal would be no

exception.

Thank you,

Lurline McGregor



- DCCA nov03 response.doc

2003-2-018



"Sean McLaughlin" <sean@akaku.org> on 12/10/2003 05:48:41 PM

To: <cabletv@dcca.hawaii.gov>
cc: "Ellen Pelissero" <ellen.pelissero@co.maui.hi.us>, "Myles Inokuma" <minokuma@msn.com>, "Mark Recktenwald" <mark.e.recktenwald@dcca.hawaii.gov>

Subject Comments on draft cable plan

Aloha!

Comments of Akaku: Maui Community TV are attached as a Word file.

Please contact me directly if you have any questions or would like more information.

Sincerely,
Sean McLaughlin

Sean McLaughlin
President & CEO tel: 808-871-5554
Akaku: Maui Community TV fax: 808-871-5510
333 Dairy Rd. X104 e: sean@akaku.org
Kahului, HI 96732

Molokai & Lanai toll-free 888-577-6240
or e: r.sean.mclaughlin@alum.dartmouth.org



- DCCA comment 12-10-03.doc

Comments of **Akaku: Maui Community TV (Akaku)**
Regarding Department of Commerce and Consumer Affairs (DCCA)
DRAFT Plan for Public, Education and **Government** Access (PEG)
December 10, 2003

Although Akaku's board of directors has not adopted them, these informal comments are offered by Akaku's president/CEO to assist the DCCA in finalizing a report for the upcoming session of the State Legislature.

Overall, the DCCA should be commended for undertaking meaningful efforts to address historic issues and to document the currently unclear policies that have been developed over the years in relation to community access media (ie. PEG) and public TV (PBS).

As noted in past comments, Akaku remains concerned that DCCA's regulation of the cable TV industry over the past five years or more has lacked ethical oversight that is accountable to the public interest. DCCA's new draft plan does begin to address public accountability through activation of the Cable Advisory Committee and by focusing on some of the issues surrounding management and oversight for community access resources that are currently derived from State regulation of the cable industry. However, this draft does not fully address the larger question - How is State regulation of cable TV operators under DCCA protecting consumers and advocating the interests of the public?

Given the short time frame for these comments, specific concerns and questions regarding choice of language and perspective on larger social policy issues in the changing landscape of federal communications policy are not addressed here. These comments focus on the five key issues identified in the DCCA's executive summary:

1. Issues #1 "PEG Oversight" in the draft plan, recommends "Home Rule for PEGs at the Option of Counties." DCCA's proposal is a half measure that would delegate a portion of responsibility and related First Amendment liability to the Counties without transferring the corresponding authority to regulate cable TV operators in other important areas. This proposal from DCCA offers an added layer of government oversight that risks overly politicizing community access and PBS, without offering substantial benefit to local communities. If DCCA is managing the oversight of cable TV in a competent and publicly accountable manner, Counties will be smart to forego this option.

2. Draft plan issue #4 "Funding - Financial Resources" addresses additional support for underserved areas. DCCA's proposal to distribute additional funds to underserved areas is an important positive acknowledgment of the concerns raised for many years by Neighbor Islands, and more recently on O'ahu. Reallocation of cable franchise resources to serve rural and remote communities on every island is clearly needed and DCCA's proposal to reallocate their own funds is a strong and positive step to address this issue.

3. Issue #2 in the draft plan "Governance - PEG Board Appointment Process," proposing "broader" participation in PEG governance. Note: the policy discussion of this issue applies equally to PBS. Unfortunately, DCCA proposes to continue appointing a majority of board

members. The continuation of DCCA authority to appoint boards leaves the issues of "sunshine" and open records, that have been raised by the Office of Information Practices (OIP) and others, unresolved. DCCA's proposal to require bylaw provisions of PEG/PBS to ensure accountable processes may be inadequate to address the legal issues, and opens the question of State intervention in the self-governance of nominally independent PEG/PBS operations. One positive aspect of DCCA's proposal is the idea of having community access and PBS constituents represented on the boards - through an election process. It may be difficult to implement a fair system of electing such board members, but in principle this proposal provides a mechanism for grounding the organizations' policies and procedures with affected stakeholders. Notably, Akaku has already addressed this issue for Maui County by including active producers and program presenters on the board for the past decade.

4. The Cable Advisory Committee (CAC) is addressed in draft plan issue #3. DCCA proposes to comply with State law (Chapter 440G) and have the Governor appoint five members to the CAC, appointments will be subject to confirmation by the Senate. The CAC can create and manage an open process to hold DCCA's cable regulation accountable to the public and provide meaningful input regarding protection of consumers and advocacy for the public interest. DCCA's offer to have the four Mayors recommend names for appointment is a very positive development to encourage local participation, particularly for the Neighbor Islands. To ensure representation for the most underserved communities, we recommend that the Governor consider for 'at-large, appointment a resident of the island of Moloka'i or Lana'i.

5. Draft plan issue #17 "Independent Third Party Reviews" proposes a reasonable provision for independent review to ensure that the non-profit PEG/PBS operations are managed effectively to maximize public benefits of these resources. If these reviews are used to support PEG/PBS with a constructive focus on best practices, this could be a really good thing!

Finally, issue #13 "Review of connectivity (PEG Network) currently provided by TWE" in the draft plan, though not identified in the executive summary, raises significant questions regarding DCCA's relationship with Time Warner (both cable and telecom subsidiaries). Given the ongoing cloud of ethical conflict over DCCA's cable division (State Ethics Commission determined that DCCA's cable administrator has a direct personal interest in Time Warner Telecom), this issue in particular needs to be thoroughly addressed through independent audit of franchise compliance by Time Warner. DCCA's work in this area needs to address the real and perceived conflicts that undermine the State's role in consumer protection and advocacy for the public interest.

Thank you for considering these informal comments on the draft cable plan. Akaku remains committed to work with DCCA (and with other State, Federal and County agencies) to develop intelligent regulatory policies for cable, telecom and related communications media serving the residents of Maui and Kalawao Counties.

Please feel free to call upon us anytime. Akaku's president/CEO Sean McLaughlin can be reached directly at 808-871-5554, or by e-mail at sean@akaku.org.

2003 - 2 - 019



"Clyde Sakamoto" <claydes@hawaii.edu> on 12/10/2003 09:33:13 PM

To: <cabletv@dcca.hawaii.gov>
cc:

Subject: Comments on the Draft Plan

Director Recktenwald:

Thank you for the opportunity to comment on the draft of the DCCA Plan. As the college and its staff have submitted details of its issues with and complaints about the current PEG decisionmaking structure in Maui County, the following comment refers to the proposed plan and its potential for preventing future problems.

With all due respect to the analysis and input that point to the possibility of the County of Maui serving as the entity that might accept the responsibility for PEG oversight, Maui Community College ~~asserst~~ its concern that should the County not accept this role, the current exclusion of public higher education's access to PEG resources would continue to be unfairly precluded. Furthermore, even if the County should accept this role, it is unclear as to whether earlier commitments from Maui County PEG funds would be fulfilled.

To briefly recount the basis for the change from the earlier Maui County PEG Consortium entity to the current PEG Board format, the agreement to the change was based on an agreement by the former consortium representatives from government, education, and public access interests that similar percentages of resources would continue to be available to each of the sectors. This assurance served as the primary basis for the college's agreement to the change from the consortium to a board format.

The college essentially trusted that the agreements to support education, the top priority need identified by the community, would continue. It would have been unacceptable to the college to have foregone scarce resources for supporting higher education. In a small community, such agreements have historically been relied upon as a basis for community coherence. That such a fundamental agreement would be ignored and reversed to the extent that current Akaku board decision presently would deny any PEG support to MCC as well as public education in Maui County was not imagined as a possibility.

Your assistance with supporting a plan that might more specifically assure a fair portion of the PEG resources for public higher and k-12 education would be appreciated. The current draft does not speak to meeting the broadly supported and previously identified community interest in educational programming that assists student achievement. Your leadership in restoring balance among public, education, and government access interests is central to an acceptable plan.

Your consideration of a plan where Maui County's education needs could be aided by PEG funds would contribute greatly to addressing our County community's priorities. Mahalo.

Clyde K. Sakamoto
Chancellor

2003-2-020



on 121101200310:08:40 PM

To: <cabletv@dcca.hawaii.gov>
CC:

Subject: DCCA draft plan

Director Recktenwald and DCCA Staff,
Thank you for initiating a review of PEG access and for reaching out for public participation in your process. I am encouraged by your draft plan.

Comments on

DCCA DRAFT PLAN

Department of Commerce and Consumer Affairs' (DCCA) Plan
For Public, Education, and Government (PEG) Access
November 2003

Comments by Laurie Veatch

`Olelo certified producer, editor, and camera-person
Producer of the Kukui Connection on Channel 54
Elected member of ASAC (Access Services Advisory Committee)

Overall, I think this is an impressive plan, designed to support the current successes of the PEGs and enhance greater participation by the broader public, including clients of the PEGs. My comments focus primarily on my suggestions for changes.

ISSUE #1: PEG Oversight

I prefer to have DCCA continue to oversee the PEGs without adding another layer of county administration. A reinvigorated CAC can be a venue for county involvement.

ISSUE #2: Governance - PEG Board Appointment Process

I agree with the draft plan that opening the selection process for board members will be improved by including the election of one member by certified producers.

The changes to the draft I suggest are:

Three of the positions on each board currently selected by the DCCA director will instead be by an election in which the voters and nominees are active clients of the PEG. Active clients have completed PEG training classes and have been certified by the PEG as producers or technicians (camera, studio, editing). In addition they have volunteered

on another training certified client's project (i.e. a non-PEG facilitated project) or completed and submitted a program of their own creation for broadcast within the past eighteen months.

The PEGs shall be required to amend their bylaws by April 1, 2004, subject to approval of DCCA, to codify the election process.

ISSUE #3: Cable Advisory Committee

I agree with the draft plan on this.

ISSUE #4: Funding - Financial Resources

I have some concerns here, but not enough time to flesh them out. I hope the discussion can continue through the Cable Advisory Committee.

ISSUE #5: PEG Channel Resource

Perhaps 10% of available channels could be re-visited.

ISSUE X6: Sustainability

No comment.

ISSUE #7: Greater Community Participation

This is where I have my greatest concern with the direction in which `Olelo is heading and now also with the DCCA draft plan.

In the abstract, outreach to underserved populations sounds like a good idea. However, there are significant risks, e.g.:

- (1) The PEG becomes the decision-maker concerning which populations need extra resources. Without significant public oversight, this can lead to favoritism.
- (2) In-house productions take away staff, equipment, and the sense of purpose of the PEG facility from supporting independent productions.

The danger is content control, or heavy influence over content by the PEG facility.

ISSUE #8:

ation and Collaboration Among PEG Organizations

I agree with the DCCA strongly encouraging the PEG entities to collaborate and cooperate in order to maximize the resources available to each.

Equipment Resources: PEGs should implement a policy of notification when

equipment
is planned to be retired. This will provide the opportunity for another
PEG to request the
equipment instead of it being discarded or donated. A documented process
needs to be
implemented in order for there to be mutual agreement and understanding on
the
operational logistics, including the priority of recipients, e.g.:

- 1) PEG Access corporations
- 2) Educational Institutions
- 3) Open bidding process by contributing clients
- 4) Staff purchase through open process

Programming resource sharing should include a mechanism for client
produced programs to be distributed as the first priority.

ISSUE #9: PEG By-laws

Although the by-laws of the PEG organizations are similar in nature and
content, there
are some differences which reflect the unique requirements and needs of
each access
entity. For example, the number of board members varies due to the
requirements of
each board. COMMENT: The public interest would be served by increasing
the size of `Olelo's board to include PEG access users.

AGREE: The DCCA expects each PEG access organization to comply with
their by-laws to remove the potential for complaints and inconsistent
operations.

AGREE: Specifically, the DCCA is concerned with the process by which its
board meetings are conducted and strongly encourages the adoption and
implementation of procedural rules, such as Roberts Rules of Order.
Adoption and adherence to such rules will facilitate more productive,
fair, and efficient meetings.

ISSUE #10: Sunshine law requirements under HRS Chapter 92F (Uniform Information Practices Act) and Chapter 92 (Public Agency Meetings and Records)

AGREE: DCCA believes that openness and accountability are crucial.
Accordingly, for those PEG entities that remain under DCCA's oversight,
DCCA will require that they adopt bylaws and policies which comply with
the requirements of HRS chapters 92F and 92.

ISSUE #11: Daily operational procedures responsibility of each PEG

AGREE: Although the DCCA recognizes the unique needs of all four PEG
access organizations, it strongly encourages the implementation of written
operational guidelines that address certain significant issues. The

existence of written guidelines on these issues helps facilitate transparency and consistent application of the policies of each PEG. ~~■~~
SUGGESTION: Operating Procedures should be a reporting requirement to the DCCA and be submitted any time there is a change. It should also be required that the board(s) approve any changes to the operating procedures.

ISSUE #12: Development of technical standards

No comment.

ISSW #13: Review of connectivity (PEG Network) currently provided by TWE

No comment.

ISSUE #14: More Civic Affairs Programming (CSPAN for Hawaii)

I agree with this statement: ~~■~~

The idea of a CSPAN for Hawaii has potential, but many significant issues need to be addressed. ~~■~~ Further discussion should include the public. This could be address by the Cable Advisory Committee.

ISSUE #15: Resolution of complaints concerning PEGs

AGREE: ~~■~~ However, situations have arisen where the DCCA's involvement is required to assist in the resolution of inquiries and complaints received from PEG producers or other constituents. In these instances, the DCCA will attempt to facilitate a reasonable solution / compromise.. ~~■~~

STRONGLY AGREE: ~~■~~ The appropriate resolution of complaints by the PEGs is a factor taken into account by the DCCA in evaluating the performance of each PEG. ~~■~~

ISSUE #16: Role of PEGs : Production versus Facilitation

THIS IDENTIFIED CONCERN IS NOT ADDRESSED BY THE DRAFT PLAN: ~~■~~ As the needs of their clients have evolved, PEG access organizations have reviewed and assessed how they can continue to serve their unique communities. In addition to their

mission of training, developing production skills, and providing a forum for exchange of

ideas, PEG access organizations have also been involved in activities that some have

~~deemed non-traditional. Examples include: (1) responding to local~~

government RFPs for

video and captioning services which results in competition with private organizations,

and (2) the development of programming utilizing the organization's resources, which

could result in decreased availability of equipment or other resources

(such as air time) to the public users of these access facilities. The development of such programming is sometimes referred to as 'community building'.
I DISAGREE WITH THIS: ~~The DCCA has given the PEGs discretion to~~
~~terminate whether, and to what extent, they should~~ enaase in such activities. The DCCA will continue to allow the PEGs discretion in this area.

I suggest that the DCCA develop guidelines for the PEGs concerning this dangerous direction they are taking away from public access toward being production houses.

ISSUE #17: Independent Third Party Reviews

AGREE: Some members of the public have suggested that the PEGs should periodically be subjected to the more detailed evaluation that an independent third party review would provide. DCCA agrees with this suggestion, and will implement a program to provide for the PEGs to be reviewed periodically by an independent third party. Such a review could include issues such as whether the PEGs are complying with the terms of their contracts with DCCA (or the County) and that the funds they receive are used for their intended purposes. DCCA expects that one PEG would be reviewed each year, so that each PEG would be reviewed every four years.
Even if a county exercises the option to oversee the PEG entity, DCCA would retain the right to have reviews performed on that PEG. DCCA believes that the state must retain the ability to require such reviews in order to ensure that cable subscribers' monies are being used appropriately.

--
Submitted by
Laurie Veatch
December 10, 2003

2003-2-021



"Sean McLaughlin"
<sean@akaku.org>

12/14/2003 11:46 AM
Please respond to sean

To: "Mark Recktenwald" <mark.e.recktenwald@dcca.hawaii.gov>
cc: "Myles Inokuma" [REDACTED] "Clyde Sakamoto"
<Clyde.Sakamoto@maui.cc.hawaii.edu>, "David Lassner"
<david@hawaii.edu>
Subject: MCC comments to DCCA

Dear Director Recktenwald (fyi Myles Inokuma, Clyde Sakamoto and David Lassner) -

For the record, Akaku disagreea with recent public comments to you provided by Clyde Sakamoto. His comments dated December 10, 2003 are available online - on page 78 of the 04 page .pdf public comment file at DCCA's website: http://www.hawaii.gov/dcca/catv/pegplan_information.html. These latest comments contain mischaracterizations, including reference to the unanimous agreement that was reached by all nine members of the "PEG Access Consortium" in October of 1997.

If it weren't a waste of precious time, one might recommend that you review minutes of those 1997 meetings or discuss the agreement with the former members of that group who signed it over six years ago. In any case, MCC did not have a veto over the agreement and their undocumented and unique views as to the particular history do not preempt or alter the written resolution adopted by the group, which text is attached below.

Two additional false impressions are left by Sakamoto's comments that need to be answered. First, Akaku does NOT exclude any public education staff, faculty, students, parents, families or anyone else from access to PEG resources. Second, all past obligations of Akaku to UH-MCC have been met and properly recorded in contracts and financial records that are audited annually. The only outstanding issue at this time is the need for MCC to document their acceptance of responsibility to manage the PEG access channel (MCC-TV55) that Akaku has dedicated for UH-MCC's use.

We continue to believe that allocation of community access resources is a local matter that is appropriately resolved through accountable and transparent oversight of PEG resources, which is solely the contractual responsibility of Akaku's board of directors.

Thank you for considering our views and the public record in this regard. If you would like more information or have questions on this or other matters, please feel free to call upon us.

Sincerely,
Sean McLaughlin

Sean McLaughlin
President & CEO
Akaku: Maui Community TV
333 Dairy Rd. #104
Kahului, HI 96732
tel: 808-871-5554
fax: 808-871-5510
e: sean@akaku.org

Molokai & Lanai toll-free 888-577-6240
or e: r.sean.mclaughlin@alum.dartmouth.org

Here's text of the final resolution adopted by all nine members of the Maui PEG Access Consortium on October 8, 1997:

URGING THE CONSOLIDATION OF COMMUNITY ACCESS ADMINISTRATION FOR MAUI COUNTY

WHEREAS, the Department of commerce and Consumer Affairs (DCCA) is responsible for the regulation of the cable TV industry through franchising of cable operators in the State of Hawaii; and

WHEREAS, the DCCA requires that cable operators contribute community benefits in exchange for their privilege of occupying public rights of way; and

WHEREAS, community access media resources devoted to providing public, educational, and governmental programming services, known as PEG access, are among the substantial community benefits derived from the regulation of the cable industry; and

WHEREAS, the DCCA has created PEG access organizations in each of the four counties; and

WHEREAS, Maui County is the only County in the State that has both an access organization, known as Akaku: Maui Community Television (Akaku) to manage the cable access funds and administer community media resources for Maui County, as well as this advisory body known as the Maui PEG Access Consortium to assist in the management and planning for community access resources; and

WHEREAS, the Maui PEG Access Consortium, as determined by the DCCA, consists of members representing the County of Maui administration, the Maui County council, the Maui District of the Hawaii Department of Education, Maui Community College, Akaku, and the cable operators who provide service in Maui County; and

WHEREAS, the Maui PEG Access Consortium parties are committed to work together to develop the best possible community access media resources for Maui County, yet find that doing so under the current structure is unwieldy; and

WHEREAS, the Cable Television Division, Department Of Commerce and Consumer Affairs hired Constance A. Hassell to conduct a study of the statewide PEG access plan; and

WHEREAS, the study, entitled "Disputes over PEG Resources; Splitting the Baby is NOT the Solution," was completed in 1997; and

WHEREAS, the Hassell study states that the "DCCA should resolve the situation in Maui County, where a legally nonexistent but exceptionally influential consortium allocates channel time and funds. The current arrangement is untenable; decision making has already been diffused to the point of occasional paralysis"; and

WHEREAS, the Hassell study also states "Moreover, DCCA's regular dealing with this consortium directly involve it in managing PEG Access funds which could make the portion it oversees a state agency for liability, sunshine

law, and audit purposes"; and

WHEREAS, the Hassell study also states, "...the Consortium members have been asked to act for the good of the community as a whole, comparable to the most basic duty of directors of the other PEQ access boards"; and

WHEREAS, Akaku is a private, non-profit corporation which conducts its affairs in a manner accountable to the public and responsive to the local community; and

WHEREAS, Akaku is legally established and duly constituted to provide overall management of community access resources with direct accountability to the local community and is thus, an appropriate entity to transfer all Maui PEG Access Consortium's responsibilities and liabilities; and

WHEREAS, Akaku has expressed a willingness to restructure its board to incorporate representatives from the public, education, and government sectors; now, therefore,

BE IT RESOLVED by the Maui PEG Access Consortium:

- 1) That it hereby recommends that the Maui Access Consortium be dissolved, effective November 19, 1997; and
- 2) That it recommends that all of its responsibilities and liabilities be transferred to Akaku; and
- 3) That it hereby requests that copies of this resolution be sent to the Department of Commerce and Consumer Affairs, the President of the Hawaii State Senate, the Speaker of the Hawaii House of Representatives.

[original signed by all nine member representatives]

CABLE DIVISION
COMMERCE AND
CONSUMER AFFAIRS

DEC 13 1 18 PM '03

A E P S

FILE

2003-02-022

Dear Mark,

Thank you for your ever going efforts on the draft PEG plan. As a board member of PBS Hawaii I support the public policy decision to continue funding for PBS Hawaii and for treating PBS Hawaii differently from a PEG entity.

Aloha + Mahalo!
Valley O'Brien

2003-2-023



Patti K Kodama
12/22/2003 10:46 AM

.....

To: cabletv@dcca.hawaii.gov
cc:

Subject: RE: comments on PEG plan

"Sean McLaughlin"

<sean@akaku.org>

12/21/2003 03:02 PM

Please respond to sean

To: "Mike McCartney" <mmccartney@pbshawaii.org>, <nehannah@KSBE.edu>, <Robbie.alm@heco.com>, <Susan.Eichor@verizon.com>, <susaneichor@verizon.com>, <rtsujimura@imanakakudo.com>
cc: <mark_recktenwald@dcca.hawaii.gov>, <clyde_sonobe@dcca.hawaii.gov>, <naleo@interpac.net>, <jdd@attglobal.net>, <lmccgregor@olelo.org>, <Jroberston@hoike.org>, <senihara@capitol.hawaii.gov>
Subject: RE: comments on PEG plan

Aloha Mike, et al -

Thanks for sharing your perspective from PBS Hawaii on DCCA's draft cable plan.

For the record, Akaku prefers that DCCA also treat Akaku in a contractual and regulatory manner similar to PBS Hawaii. Therefore as a matter of principle we generally support the regulatory and contractual policies that DCCA affords to PBS Hawaii.

Your consistent and positive participation in DCCA meetings and other related cable TV discussions is greatly appreciated. We look forward to future collaborations that can empower voices on PBS Hawaii for people who live and work on the islands of Maui, Molokai, Lanai and Kahoolawe.

Peace,
Sean

Sean McLaughlin
President & CEO tel: 808-871-5554
Akaku: Maui Community TV fax: 808-871-5510
333 Dairy Rd. #104 e: sean@akaku.org
Kahului, HI 96732

Molokai & Lanai toll-free 888-577-6240
or e: r.sean.mclaughlin@alum.dartmouth.org

-----Original Message-----

From: Mike McCartney (mailto:mmccartney@pbshawaii.org]
Sent: Wednesday, December 17, 2003 11:23 AM
To: nehannah@KSBE.edu; Robbie.alm@heco.com; Susan.Eichor@verizon.com;

sueaneicho[REDACTED] rtsujimura@imanakakudo.com
Cc: mark-recktenwald@dcca.hawaii.gov; clyde_sonobe@dcca.hawaii.gov;
naleo@interpac.net; jdd@attglobal.net; lmcgregor@olelo.org;
sean@akaku.org; Jroberston@hoike.org; senihara@capitol.hawaii.gov
Subject: Re: comments on PEG plan

digitaleye@hi.net writes:
>here

This was sent to Jeff Garland regarding his request for information...
FYI. Thank you.

Jeff:

Regarding your request for copies of comments from Hawaii Public Television Foundation Board members on the DCCA's draft PEG Plan, I do not have any copies on file. However, I did check and the three (3) that you have already posted were the only comments submitted that I am aware of.

Our general position is that we support the draft plan as it relates to PBS Hawaii. We do not have an official position regarding PEG organizations. We are not a PEG organization and believe that our relationship with DCCA is structurally sound given our mission and purpose. We need our current funding levels (1% of the franchise fee) to maintain our Operations. We are not requesting additional levels of funding and believe that the current level of funding is fair and serves the public well. It is a policy decision that we strongly support. Since a majority of our funding does not come from the franchise fee and the DCCA does not appoint our board members, we do not fit into the same category that PEGs do. We are a STATEWIDE TV broadcaster licensed by the FCC as opposed to being solely a cable channel. We are governed and regulated by an additional set of rules and guidelines beyond those of cable channels. Our service is free to those who choose not to pay for cable service and who do not have cable service available to them. Therefore, we support the existing relationship and governance structure that currently exists between DCCA and ourselves. Again, our position is that we support the PBS HAWAII portion of the draft plan and have no official position on other PEG organization related issues.

As an organization I just want to focus on providing good quality service and not get distracted by issues that do not relate to us. I hope this helps you to understand our position on the issue.

Also, I do remember personally giving you my original copy our official written position at the Oahu hearing. Did you need another copy? However, I never got a copy of your testimony as I thought you said you would get it to us. Is that still possible?

I did send in additional written comments after that hearing. (I did not submit anything specifically on this draft.) Would you like a copy of my second set of comments which was in addition to my testimony? If so, please let me know where I can mail you a copy. I will be happy to

forward them to you. Thank you.

Aloha, Mike

[IMAGE]